

## **ANNEX II**

### **GENERAL CONDITIONS**

**Submission of an application implies the acceptance of these General Conditions. These General Conditions constitute an annex to this Framework partnership decision and bind the partner to whom it is addressed.**

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

### **GENERAL CONDITION N° 1 – GENERAL OBLIGATIONS OF THE PARTNER**

The partner shall:

- (a) respect the common general objectives that formed the basis for establishing the partnership, as mentioned in the Preamble and in the Action plan set out in Annex I, and endeavour to achieve in practice those objectives in each work programme for which a specific grant is awarded;
- (b) maintain relations of mutual co-operation and regular and transparent exchanges of information with the Agency on the implementation and the follow-up to implementation of the Action plan set out in Annex I and of any specific grant awarded by the Agency under the Framework decision, as well as on other matters of common interest related to the Framework decision;
- (c) be responsible for complying with any legal obligations incumbent on it;
- (d) be responsible for carrying out the work programmes , for which specific grants were awarded, in accordance with the terms and conditions of the Framework decision and the Specific decisions;
- (e) inform the Agency immediately of any change in its legal, financial, technical, organisational or ownership situation and of any change in its name, address or legal representative;
- (f) inform the Agency immediately of any change likely to affect or delay the implementation of a work programme, for which a specific grant was awarded, of which the partner is aware.

### **GENERAL CONDITION N° 2 – COMMUNICATIONS BETWEEN THE AGENCY AND THE PARTNER**

#### **2.1 Form and means of communications**

Any communication relating to the Framework decision or a Specific decision or to their implementation shall be made in writing (in paper or electronic form), shall bear the number of the decision concerned and shall be made using the communication details identified in Article 3 of the Framework decision.

Electronic communications shall be confirmed by an original signed paper version of that communication if requested by the Agency or the partner provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

Formal notifications shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

## **2.2 Date of communications**

Any communication is deemed to have been made when it is received by the addressee, unless the Framework decision or the Specific decision refer to the date when the communication was sent.

Electronic communication is deemed to have been received by the addressee on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in Article 3 of the Framework decision. Dispatch shall be deemed unsuccessful if the sender receives a message of non-delivery. In this case, the sender shall immediately send again such communication to any of the other addresses listed in Article 3 of the Framework decision. In case of unsuccessful dispatch, the sender shall not be held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Agency using the postal services is considered to have been received by the Agency on the date on which it is registered by the department identified in Article 3.2 of the Framework decision.

Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the addressee on the date of receipt indicated on the return receipt or equivalent.

## **GENERAL CONDITION N° 3 – LIABILITY FOR DAMAGES**

- 3.1** The Agency shall not be held liable for any damage caused or sustained by the partner, including any damage caused to third parties as a consequence of or during the implementation of a work programme.
- 3.2** Except in cases of force majeure, the partner shall compensate the Agency for any damage sustained by it as a result of the implementation of a work programme or because a work programme was not implemented or implemented poorly, partially or late.

## **GENERAL CONDITION N° 4 - CONFLICT OF INTERESTS**

- 4.1** The partner shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Framework decision or the Specific decisions is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (“conflict of interests”).
- 4.2** Any situation constituting or likely to lead to a conflict of interests during the implementation of the Framework decision or the Specific decisions shall be notified to the Agency, in writing, without delay. The partner shall immediately take all the necessary steps to rectify this situation. The Agency reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

## **GENERAL CONDITION N° 5 – CONFIDENTIALITY**

- 5.1** The Agency and the partner shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Framework decision or the Specific decisions and which are explicitly indicated in writing as confidential.
- 5.2** The partner shall not use confidential information and documents for any reason other than fulfilling its obligations under the Framework decision and the Specific decisions, unless otherwise agreed with the Agency in writing.
- 5.3** The Agency and the partner shall be bound by the obligations referred to in General Conditions n° 5.1 and 5.2 during the implementation of the Framework decision and the Specific decision and for a period of five years starting from the payment of the balance under the Specific decision concerned, unless:
- (a) the Agency or the partner agrees to release the other from the confidentiality obligations earlier;
  - (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Agency or the partner;
  - (c) the disclosure of the confidential information is required by law.

## **GENERAL CONDITION N° 6 – PROCESSING OF PERSONAL DATA**

### **6.1 Processing of personal data by the Agency**

Any personal data included in the Framework decision and the Specific decisions shall be processed by the Agency pursuant to Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 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 by the data controller identified in Article 3.1 of the Framework decision solely for the purposes of the implementation, management and monitoring of the Framework decision and the Specific decisions, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

The partner shall have the right of access to his/her personal data and the right to rectify any such data. Should the partner have any queries concerning the processing of his/her personal data, he/she shall address them to the data controller, identified in Article 3.1 of the Framework decision.

The partner shall have the right of recourse at any time to the European Data Protection Supervisor.

## **6.2 Processing of personal data by the partner**

Where the Framework decision or the Specific decision require the processing of personal data by the partner, the partner may act only under the supervision of the data controller identified in Article 3.1 of the Framework decision, in particular with regard to the purpose of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his or her rights.

The access to data that the partner grants to its personnel shall be limited to the extent strictly necessary for the implementation, management and monitoring of the Framework decision and the Specific decisions.

The partner undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (iii) unauthorised persons from using data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Agency;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

## **GENERAL CONDITION N° 7 – VISIBILITY OF UNION FUNDING**

### **7.1 Information on Union funding and use of European Union emblem**

Unless the Agency requests or agrees otherwise, any communication or publication related to a work programme, made by the partner, including at conferences, seminars or in any

information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall indicate that the work programme has received funding from the Union and shall display the European Union emblem.

When displayed in association with another logo, the European Union emblem must have appropriate prominence.

The obligation to display the European Union emblem does not confer to the partner a right of exclusive use. The partner shall not appropriate the European Union emblem or any similar trademark or logo, either by registration or by any other means.

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the partner is exempted from the obligation to obtain prior permission from the Agency to use the European Union emblem.

## **7.2 Disclaimers excluding Agency and Commission responsibility**

Any communication or publication related to the implementation of a work programme, made by the partner in any form and using any means, shall indicate that it reflects only the author's view and that the Agency and the Commission are not responsible for any use that may be made of the information it contains.

## **GENERAL CONDITION N° 8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

### **8.1 Ownership of the results by the partner**

Unless stipulated otherwise in the Specific decision, ownership of the results of a work programme, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the partner.

### **8.2 Pre-existing industrial and intellectual property rights**

Where industrial and intellectual property rights, including rights of third parties, exist prior to the notification of the Specific decision, the partner shall establish a list which shall specify all rights of ownership and use of the pre-existing industrial and intellectual property rights and disclose it to the Agency at the latest before the commencement of implementation.

The partner shall ensure that it or its affiliated entities have all the rights to use any pre-existing industrial and intellectual property rights during the implementation of the Specific decision.

### **8.3 Rights of use of the results and of pre-existing rights by the Agency and/or the Union**

Without prejudice to General Conditions n° 1, 3 and 8.1, the partner grants the Agency and/or the Union the right to use the results of a work programme for the following purposes:

- (a) use for its own purposes, and in particular, making available to persons working for the Agency, the Union institutions, agencies and bodies and to Member States' institutions, as well as, copying and reproducing in whole or in part and in unlimited number of copies;
- (b) distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the internet, including on the Europa website, as a downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;
- (c) translation;
- (d) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (e) storage in paper, electronic or other format;
- (f) archiving in line with the document management rules applicable to the Agency and/or the Commission;
- (g) rights to authorise or sub-licence the modes of exploitation set out in points (b) and (c) to third parties.

Additional rights of use for the Agency and/or the Union may be provided for in the Specific decision.

The partner shall warrant that the Agency and/or the Union has the right to use any pre-existing industrial and intellectual property rights, which have been included in the results of a work programme. Unless specified otherwise in the Specific decision, those pre-existing rights shall be used for the same purposes and under the same conditions applicable to the rights of use of the results of the work programme.

Information about the copyright owner shall be inserted when the result is divulged by the Agency and/or the Union. The copyright information shall read: "© – year – name of the copyright owner. All rights reserved. Licenced to the European Union under conditions."

## **GENERAL CONDITION N° 9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF A WORK PROGRAMME**

- 9.1** Where the implementation of a work programme requires the procurement of goods, works or services, the partner shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, it shall avoid any conflict of interests.



A partner acting in its capacity of a contracting authority within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts or a contracting entity within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors shall abide by the applicable national public procurement rules.

- 9.2** The partner shall retain sole responsibility for carrying out the work programme concerned and for compliance with the provisions of the Framework decision and the Specific decision. The partner shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis the Agency under the Framework decision or the Specific decision.
- 9.3.** The partner shall ensure that the conditions applicable to it under General Conditions n° 3, 4, 5, 8 and 27 are also applicable to the contractor.

#### **GENERAL CONDITION N° 10 – SUBCONTRACTING OF TASKS FORMING PART OF A WORK PROGRAMME**

- 10.1** A "subcontract" is a procurement contract within the meaning of General Condition n° 9, which covers the implementation by a third party of tasks forming part of a work programme as described in Annex I of a Specific decision.
- 10.2** The partner may subcontract tasks forming part of a work programme, provided that, in addition to the conditions specified in General Condition n° 9 and the Framework decision, the following conditions are complied with:
- (a) subcontracting only covers the implementation of a limited part of the work programme;
  - (b) recourse to subcontracting is justified having regard to the nature of the tasks covered by the work programme and what is necessary for its implementation;
  - (c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex II of the Specific decision;
  - (d) any recourse to subcontracting, if not provided for in Annex I of the Specific decision, is communicated by the partner and approved by the Agency without prejudice to General Condition n° 12.2;
  - (e) the partner ensures that the conditions applicable to it under General Condition n° 7 are also applicable to the subcontractor.

**GENERAL CONDITION N° 11 - FINANCIAL SUPPORT TO THIRD PARTIES**

- 11.1** Where the implementation of a work programme requires giving financial support to third parties, the partner shall give such financial support in accordance with the conditions specified in Annex I of the Specific decision, which shall at least contain:
- (a) the maximum amount of financial support, which shall not exceed EUR 60 000 for each third party except where the financial support is the primary aim of the work programme as specified in Annex I of the Specific decision;
  - (b) the criteria for determining the exact amount of the financial support;
  - (c) the different types of activity that may receive financial support, on the basis of a fixed list;
  - (d) the definition of the persons or categories of persons which may receive financial support;
  - (e) the criteria for giving the financial support.
- 11.2** By way of derogation from General Condition n° 11.1, in case the financial support takes the form of a prize, the partner shall give such financial support in accordance with the conditions specified in Annex I of the Specific decision, which shall at least contain:
- (a) the conditions for participation;
  - (b) the award criteria;
  - (c) the amount of the prize;
  - (d) the payment arrangements.
- 11.3** The partner shall ensure that the conditions applicable to it under General Conditions n° 3, 4, 5, 7, 8 and 27 are also applicable to the third parties receiving financial support.

**GENERAL CONDITION N° 12 – AMENDMENTS TO THE FRAMEWORK DECISION AND THE SPECIFIC DECISIONS**

- 12.1** Any amendment to the Framework decision or a Specific decision shall be made in writing either by means of a modifying Decision or, as may be the case, by means of a letter.
- 12.2** An amendment may not have the purpose or the effect of making changes to the Framework decision or the Specific decision which would call into question the Agency's decision to establish the Framework decision or to award the specific grant or which would be contrary to the equal treatment of applicants.

- 12.3** Any request for amendment by the partner shall be duly justified and shall be sent to the Agency in due time before it is due to take effect, and, as far as Specific decisions are concerned, at the latest one month before the end of the period set out in Article 2.2 of the Specific decision, except in cases duly substantiated by the partner and accepted by the Agency.
- 12.4** In case of a specific operating grant the period set out in Article 2.2 of the Specific decision shall not be extended via amendments.
- 12.4** Amendments shall enter into force on the date on the date of notification of the modifying Decision or on the date of notification of the letter approving of the request for amendment.

Amendments shall take effect on the date indicated in the modifying Decision or, in the absence of such a date, on the date of notification of the said modifying Decision or letter.

### **GENERAL CONDITION N° 13 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES**

- 13.1** Claims for payments of the partner against the Agency may not be assigned to third parties, except in duly justified cases where the situation warrants it.

The assignment shall only be enforceable against the Agency if it has accepted the assignment on the basis of a written and reasoned request to that effect made by the partner. In the absence of such an acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on the Agency.

- 13.2** In no circumstances shall such an assignment release the partner from its obligations towards the Agency.

### **GENERAL CONDITION N° 14 – FORCE MAJEURE**

- 14.1** "*Force majeure*" shall mean any unforeseeable exceptional situation or event beyond the the Agency's and/or the partner's control, which prevents either of them from fulfilling any of their obligations under the Framework decision or a Specific decision, which was not attributable to error or negligence on their part or on the part of subcontractors, affiliated entities or third parties involved in the implementation and which proves to be inevitable in spite of exercising all due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as *force majeure*.
- 14.2** The partner faced with *force majeure* shall formally notify the Agency without delay, stating the nature, likely duration and foreseeable effects.

**14.3** The partner shall take the necessary measures to limit any damage due to *force majeure*. The partner shall do its best to resume the implementation of the work programme as soon as possible.

**14.4** The partner faced with *force majeure* shall not be held to be in breach of its obligations under the Framework decision or a Specific decision if it has been prevented from fulfilling them by *force majeure*.

## **GENERAL CONDITION N° 15 – SUSPENSION OF THE IMPLEMENTATION -- NOT APPLICABLE**

## **GENERAL CONDITION N° 16 – TERMINATION OF THE FRAMEWORK DECISION AND THE SPECIFIC DECISIONS**

### **16.1 Termination of the Framework decision or a Specific decision by the partner**

The partner may terminate the Framework decision at any time by formally notifying the Agency thereof, specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect. The partner shall complete the implementation of any Specific decision, governed by the Framework decision, which has entered into force before the date on which the termination of the Framework decision takes effect.

In duly justified cases the partner may terminate a Specific decision by formally notifying the Agency thereof, stating clearly the reasons and specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect.

If no reasons are given or if the Agency considers that the reasons exposed cannot justify the termination, it shall formally notify the partner, specifying the grounds thereof, and the Specific decision shall be deemed to have been terminated improperly, with the consequences set out in the third subparagraph of General Condition n° 16.3.

### **16.2 Termination of the Framework decision or a Specific decision by the Agency**

**16.2.1** The Agency may decide to terminate the Framework decision at any time by formally notifying the partner thereof, specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect. Without prejudice to its right to terminate a Specific decision according to General Condition n° 16.2.2 and the effects of such a termination according to General Condition n° 16.3, the Agency shall honour its obligations arising from the implementation of any Specific decision, governed by the Framework decision, which has entered into force before the date on which the termination of the Framework decision takes effect.

**16.2.2** The Agency may decide to terminate the Framework decision or a Specific decision in the following circumstances:

- (a) if a change to the partner's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Framework decision or the Specific decision substantially or calls into question the Agency's decision to establish the framework partnership or to award the specific grant;
- (b) if the partner does not implement the work programme as specified in Annex I of the Specific decision or fails to comply with another substantial obligation incumbent on it under the terms of the Framework decision or the Specific decision;
- (c) in the event of *force majeure*, notified in accordance with General Condition n° 14, or in the event of suspension by the partner as a result of exceptional circumstances, notified in accordance with General Condition n° 15, where resuming the implementation is impossible or where the necessary modifications to the Framework decision or the Specific decision would call into question the Agency's decision to establish the framework partnership or to award the specific grant or would result in unequal treatment of applicants;
- (d) if the partner is declared bankrupt, is 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 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) if the partner or any related person, as defined in the second subparagraph, have been found guilty of professional misconduct proven by any means;
- (f) if the partner is not in compliance with its 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 or in which the work programme is implemented;
- (g) if the Agency has evidence that the partner or any related person, as defined in the second subparagraph, have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (h) if the Agency has evidence that the partner or any related person, as defined in the second subparagraph, have committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Framework decision or the Specific decision, including in the event of submission of false information or failure to submit required information in order to establish the framework partnership with the Agency or to obtain a specific grant; or
- (i) if the Agency has evidence that the partner has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other

grants funded by the Union or the European Atomic Energy Community which were awarded to the partner under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on a specific grant awarded under the Framework decision.

For the purposes of points (e), (g) and (h), "any related person" shall mean any natural person who has the power to represent the partner or to take decisions on its behalf.

**16.2.3** Before terminating the Framework decision or a Specific decision in accordance with General Condition n° 16.2.2, the Agency shall formally notify the partner of its intention to terminate, specifying the reasons thereof and inviting the partner, within 45 calendar days from receipt of the notification, to submit observations and, in the case of point (b) of General Condition n° 16.2.2, to inform the Agency about the measures taken to ensure that it continues to fulfil its obligations under the decision concerned.

If, after examination of the observations submitted by the partner, the Agency decides to stop the termination procedure, it shall formally notify the partner thereof.

If no observations have been submitted or if, despite the observations submitted by the partner, the Agency decides to pursue the termination procedure, it may terminate the Framework decision or the Specific decision by formally notifying the partner thereof, specifying the reasons for the termination.

In the cases referred to in points (a), (b), (d) and (f) of General Condition n° 16.2.2, the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (c), (e), (g), (h) and (i) of General Condition n° 16.2.2, the termination shall take effect on the day following the date on which the formal notification was received by the partner.

### **16.3 Effects of termination**

Where a Specific decision is terminated, payments by the Agency shall be limited to the amount determined in accordance with General Condition n° 25 on the basis of the eligible costs incurred by the partner and the actual level of implementation of the work programme on the date when the termination takes effect. Costs relating to current commitments, which are not due for execution until after the termination, shall not be taken into account. The partner shall have 60 days from the date when the termination of the Specific decision takes effect, as provided for in General Conditions n° 16.1 and 16.2.3, to produce a request for payment of the balance in accordance with General Condition n° 23.2. If no request for payment of the balance is received within this time limit, the Agency shall not reimburse or cover any costs which are not included in a financial statement approved by it or which are not justified in a technical report approved by it. In accordance with General Condition n° 26, the Agency shall recover any amount already paid, if its use is not substantiated by the technical reports and, where applicable, by the financial statements approved by the Agency.

Where the Agency, in accordance with point (b) of General Condition n° 16.2.2, is terminating the Specific decision on the grounds that the partner has failed to produce the request for payment and, after a reminder, has still not complied with this obligation within the deadline set out in General Condition n° 23.3, the first subparagraph shall apply, subject to the following:

- (a) there shall be no additional time period from the date when the termination of the Specific decision takes effect for the partner to produce a request for payment of the balance in accordance with General Condition n° 23.2; and
- (b) the Agency shall not reimburse or cover any costs incurred by the partner up to the date of termination or up to the end of the period set out in Article 2.2 of the Specific decision, whichever is the earlier, which are not included in a financial statement approved by it or which are not justified in a technical report approved by it.

In addition to the first and second subparagraphs, where the Specific decision is terminated improperly by the partner within the meaning of General Condition n° 16.1, or where the Specific decision is terminated by the Agency on the grounds set out in points (b), (e), (g), (h) and (i) of General Condition n° 16.2.2, the Agency may also reduce the specific grant or recover amounts unduly paid in accordance with General Conditions n° 25.4 and 26, in proportion to the gravity of the failings in question and after allowing the partner to submit its observations.

Neither the Agency nor the partner shall they be entitled to claim compensation by the other party on account of a termination of the Framework decision or a Specific decision.

## **GENERAL CONDITION N° 17 – ADMINISTRATIVE AND FINANCIAL PENALTIES**

**17.1** By virtue of Articles 109 and 131(4) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and with due regard to the principle of proportionality, if the partner has committed substantial errors, irregularities or fraud, has made false declarations in supplying required information or has failed to supply such information at the moment of the submission of an application or during the implementation of the Framework decision or a Specific decision, or has been found in serious breach of its obligations under the Framework decision or a Specific decision, it shall be liable to:

- (a) administrative penalties consisting of exclusion from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established and confirmed following a contradictory procedure with the partner; and/or
- (b) financial penalties of 2% to 10% of the maximum amount of the specific grant in question as set out in Article 3 of the Specific decision concerned.

In the event of another infringement within five years following the establishment of the first infringement, the period of exclusion under point (a) may be extended to 10 years and the range of the rate referred to in point (b) may be increased to 4% to 20%.

- 17.2** The Agency shall formally notify the partner of any decision to apply such penalties.

The Agency is entitled to publish such decision under the conditions and within the limits specified in Article 109(3) Regulation (EU, Euratom) No 966/2012.

An action may be brought against such decision before the General Court of the European Union, pursuant to Article 263 of the Treaty on the Functioning of the European Union ("TFEU").

### **GENERAL CONDITION N° 18 – APPLICABLE LAW, COMPETENT COURT AND ENFORCEABLE DECISION**

- 18.1** The Framework decision and any Specific decision are governed by the Union law.
- 18.2** Pursuant to Article 263 TFEU, the partner may bring legal proceedings regarding decisions by the Agency concerning the implementation of this Framework decision or any Specific decision before the General Court or, on appeal, the Court of Justice of the European Union. The proceedings shall be instituted within two months of the notification of the decision to the applicant or, in the absence thereof, of the date on which the decision came to its knowledge.
- 18.3** By virtue of Article 299 TFEU, for the purposes of recoveries within the meaning of General Condition n° 26 or financial penalties, the Commission may adopt an enforceable decision to impose pecuniary obligations on persons other than States. An action may be brought against such decision before the General Court of the European Union pursuant to Article 263 TFEU.



## **PART B – FINANCIAL PROVISIONS**

### **GENERAL CONDITION N° 19 – ELIGIBLE COSTS**

#### **19.1 Conditions for the eligibility of costs**

"Eligible costs" of the work programme are costs actually incurred by the partner which meet the following criteria:

- (a) they are incurred in the period of duration of the work programme set out in Article 2.2 of the Specific decision, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in General Condition n° 23.2 and Article 4.1 of the Specific decision;
- (b) they are indicated in the estimated budget set out in Annex II of the Specific decision;
- (c) they are incurred in connection with the work programme as described in Annex I of the Specific decision and are necessary for its implementation;
- (d) 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 with the usual cost accounting practices of the partner;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

#### **19.2 Eligible costs**

To be eligible, direct costs shall comply with the conditions of eligibility set out in General Condition n° 19.1.

In particular, the following categories of costs are eligible operating costs, provided that they satisfy the conditions of eligibility set out in General Condition n° 19.1 as well as the following conditions:

- (a) the costs of personnel working under an employment contract with the partner or an equivalent appointing act and assigned to the project, comprising actual salaries plus social security contributions and other statutory costs included in the remuneration, provided that these costs are in line with the partner's usual policy on remuneration; those costs may also include additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used.

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

- (b) costs of travel and related subsistence allowances, provided that these costs are in line with the partner's usual practices on travel and do not exceed the scales approved annually by the Commission, if any;
- (c) the depreciation costs of equipment or other assets (new or second-hand) as recorded in the accounting statements of the partner, provided that the asset has been purchased in accordance with General Condition n° 9 and that it is written off in accordance with the international accounting standards and the usual accounting practices of the partner; the costs of rental or lease of equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

Only the portion of the equipment's depreciation, rental or lease costs corresponding to the period set out in Article 2.2 of the Specific decision concerned and the rate of actual use for the purposes of the project may be taken into account. By way of exception, the Framework decision or the Specific decision may provide for the eligibility of the full cost of purchase of equipment, where justified by the nature of the tasks covered by the work programme and the context of the use of the equipment or assets;

- (d) costs of consumables and supplies, provided that they are purchased in accordance with General Condition n° 9 and are directly assigned to the project;
- (e) costs arising directly from requirements imposed by the Framework decision or the Specific decision (dissemination of information, specific evaluation of the grant, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with General Condition n° 9;
- (f) costs entailed by subcontracts within the meaning of General Condition n° 10, provided that the conditions laid down in that General Condition are met;
- (g) costs of financial support to third parties within the meaning of General Condition n° 11, provided that the conditions laid down in that General Condition are met;
- (h) duties, taxes and charges paid by the partner, notably value added tax (VAT), provided that they are included in eligible operating costs, and unless specified otherwise in the Framework decision or the Specific decision.

### **19.3 Ineligible costs**

In addition to any other costs which do not fulfill the conditions set out in General Condition n° 19.1, the following costs shall not be considered eligible:

- (a) return on capital;

- (b) debt and debt service charges;
- (c) provisions for losses or debts;
- (d) interest owed;
- (e) doubtful debts;
- (f) exchange losses;
- (g) costs of transfers from the Agency charged by the bank of the partner;
- (h) costs declared by the partner in the framework of another action receiving a grant financed from the Union budget (including grants awarded by a Member State and financed from the Union budget and grants awarded by other bodies than the Agency for the purpose of implementing the Union budget);
- (i) contributions in kind from third parties;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.

## **GENERAL CONDITION N° 20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED**

### **20.1 Reimbursement of actual costs**

Where, in accordance with Article 3(a)(i) of the Specific decision, the grant takes the form of the reimbursement of actual costs, the partner must declare as eligible costs the costs it actually incurred for the implementation of the work programme.

If requested to do so in the context of the checks or audits described in General Condition n° 27, the partner must be able to provide adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records. In addition, the partner's usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements as well as with the amounts indicated in the supporting documents.

### **20.2 Reimbursement of pre-determined unit costs or pre-determined unit contribution**

Where, in accordance with Article 3(a)(ii) or (b) of the Specific decision, the grant takes the form of the reimbursement of unit costs or a unit contribution, the partner must declare as eligible costs or as requested contribution the amount obtained by multiplying the amount per unit specified in Article 3(a)(ii) or (b) of the Specific decision by the actual number of units used or produced.

If requested to do so in the context of the checks or audits described in General Condition n° 27, the partner must be able to provide adequate supporting documents to prove the number of units declared. However, the partner does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, to prove the amount declared per unit.

### **20.3 Reimbursement of pre-determined lump sum costs or pre-determined lump sum contribution**

Where, in accordance with Article 3(a)(iii) or (c) of the Specific decision, the grant takes the form of the reimbursement of lump sum costs or a lump sum contribution, the partner must declare as eligible costs or as requested contribution the global amount specified in Article 3(a)(iii) or (c) of the Specific decision, subject to the proper implementation of the corresponding tasks or part of the work programme as described in Annex I to the Specific decision.

If requested to do so in the context of the checks or audits described in General Condition n° 27, the partner must be able to provide adequate supporting documents to prove the proper implementation. However, the partner does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, to prove the amount declared as lump sum.

### **20.4 Reimbursement of pre-determined flat-rate costs or pre-determined flat-rate contribution**

Where, in accordance with Article 3(a)(iv) or (d) of the Specific decision, the grant takes the form of the reimbursement of flat-rate costs or a flat-rate contribution, the partner must declare as eligible costs or as requested contribution the amount obtained by applying the flat rate specified in Article 3(a)(iv) or (d) of the Specific decision.

If requested to do so in the context of the checks or audits described in General Condition n° 27, the partner must be able to provide adequate supporting documents to prove the eligible costs or requested contribution to which the flat rate applies. However, the partner does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, for the flat rate applied.

### **20.5 Reimbursement of costs declared on the basis of the partner's usual cost accounting practices**

Where, in accordance with Article 3(a)(v) of the Specific decision, the grant takes the form of the reimbursement of unit costs declared on the basis of the partner's usual cost accounting practices, the partner must declare as eligible costs the amount obtained by multiplying the amount per unit calculated in accordance with its usual cost accounting practices by the actual number of units used or produced. If requested to do so in the context of the checks or audits described in General

Condition n° 27, the partner must be able to provide adequate supporting documents to prove the number of units declared.

Where, in accordance with Article 3(a)(v) of the Specific decision, the grant takes the form of the reimbursement of lump sum costs declared on the basis of the partner's usual cost accounting practices, the partner must declare as eligible costs the global amount calculated in accordance with its usual cost accounting practices, subject to the proper implementation of the corresponding tasks or part of the work programme . If requested to do so in the context of the checks or audits described in General Condition n° 27, the partner must be able to provide adequate supporting documents to prove the proper implementation.

Where, in accordance with Article 3(a)(v) of the Specific decision, the grant takes the form of the reimbursement of flat-rate costs declared on the basis of the partner's usual cost accounting practices, the partner must declare as eligible costs the amount obtained by applying the flat rate calculated in accordance with its usual cost accounting practices. If requested to do so in the context of the checks or audits described in General Condition n° 27, the partner must be able to provide adequate supporting documents to prove the eligible costs to which the flat rate applies.

In all three cases provided for in the first, second and third subparagraphs, the partner does not need to identify the actual eligible costs covered, but it must ensure that the cost accounting practices used for the purpose of declaring eligible costs are in compliance with the following conditions:

- (a) the cost accounting practices used constitute its usual cost accounting practices and are applied in a consistent manner, based on objective criteria independent from the source of funding;
- (b) the costs declared can be directly reconciled with the amounts recorded in its general accounts; and
- (c) the categories of costs used for the purpose of determining the costs declared are exclusive of any ineligible cost or costs covered by other forms of grant in accordance with Article 3 of the Specific decision.

Where the Framework decision provides for the possibility for the partner to request the Agency to assess the compliance of its usual cost accounting practices, the partner may submit a request for assessment, which, where required by the Framework decision, shall be accompanied by a certificate on the compliance of the cost accounting practices (“certificate on the compliance of the cost accounting practices”).

The certificate on the compliance of the cost accounting practices shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer.

The certificate shall certify that the partner's cost accounting practices used for the purpose of declaring eligible costs comply with the conditions laid down in the

fourth subparagraph and with the additional conditions which may be laid down in the Framework decision.

Where the Agency has confirmed that the usual cost accounting practices of the partner are in compliance, costs declared in application of these practices shall not be challenged *ex post*, provided that the practices actually used comply with those approved by the Agency and that the partner did not conceal any information for the purpose of their approval.

## **GENERAL CONDITION N° 21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE PARTNER - NOT APPLICABLE**

## **GENERAL CONDITION N° 22 – BUDGET TRANSFERS**

Without prejudice to General Condition n° 10 and provided that the work programme is implemented as described in Annex I of the Specific decision, the partner is allowed to adjust the estimated budget set out in Annex II of the Specific decision, by transfers between the different budget categories, without this adjustment being considered as an amendment of the Specific decision within the meaning of General Condition n° 12.

## **GENERAL CONDITION N° 23 – TECHNICAL AND FINANCIAL REPORTING – REQUESTS FOR PAYMENT AND SUPPORTING DOCUMENTS**

### **23.1 Requests for further pre-financing payments and supporting documents**

Where, in accordance with Article 4.1 of the Specific decision, the pre-financing shall be paid in several instalments and where Article 4.1 of the Specific decision provides for a further pre-financing payment subject to having used all or part of the previous instalment, the partner may submit a request for a further pre-financing payment once the percentage of the previous instalment specified in Article 4.1 of the Specific decision has been used.

Where, in accordance with Article 4.1 of the Specific decision, the pre-financing shall be paid in several instalments and where Article 4.1 of the Specific decision provides for a further pre-financing payment at the end of a reporting period, the partner shall submit a request for a further pre-financing payment within 60 days following the end of each reporting period for which a new pre-financing payment is due.

In both cases, the request shall be accompanied by the following documents:

- (a) a progress report on implementation of the work programme (“technical report on progress”);
- (b) a statement on the amount of the previous pre-financing instalment used to cover costs of the work programme (“statement on the use of the previous pre-financing instalment”), drawn up in accordance with Annex V; and

- (c) where required by Article 4.1 of the Specific decision, a financial guarantee.

### **23.2 Requests for interim payments or for payment of the balance and supporting documents**

The partner shall submit a request for an interim payment or for payment of the balance within 60 days following the end of each reporting period for which, in accordance with Article 4.1 of the Specific decision, an interim payment or the payment of the balance is due.

This request shall be accompanied by the following documents:

- (a) an interim report (“interim technical report”) or, for the payment of the balance, a final report on implementation of the work programme (“final technical report”), drawn up in accordance with Annex IV; the interim or final technical report must contain the information needed to justify the eligible costs declared or the contribution requested on the basis of unit costs and lump sums where the grant takes the form of the reimbursement of unit or lump sum costs or of a unit or lump sum contribution in accordance with Article 3(a)(ii), (iii), (b) or (c) of the Specific decision, as well as information on subcontracting as referred to in General Condition n° 10.2(d);
- (b) an interim financial statement (“interim financial statement”) or, for the payment of the balance, a final financial statement (“final financial statement”); the interim or final financial statements must include a breakdown of the amounts claimed by the partner and its affiliated entities; it must be drawn up in accordance with the structure of the estimated budget set out in Annex II of the Specific decision and with Annex V and detail the amounts for each of the forms of grant set out in Article 3 of the Specific decision for the reporting period concerned;
- (c) only for the payment of the balance, a summary financial statement (“summary financial statement”); this statement must include a breakdown of the amounts declared or requested by the partner and its affiliated entities, aggregating the financial statements already submitted previously and indicating the receipts referred to in General Condition n° 25.3.2 for the partner and its affiliated entities; it must be drawn up in accordance with Annex V;
- (d) where such a certificate is required by Article 4.1 of the Specific decision or where the total contribution in the form of reimbursement of actual costs as referred to in Article 3(a)(i) of the Specific decision is at least EUR 100 000, a certificate on the financial statements and underlying accounts (“certificate on the financial statements”).

This certificate shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VI. It shall certify that the costs declared in the interim or final financial statement by the partner or its affiliated entities for the categories of costs reimbursed in accordance with Article 3(a)(i) of the Specific decision are real, accurately recorded and eligible in accordance with the Framework decision and the Specific decision. In addition, for the payment of the balance, it shall certify that all the receipts referred to in General Condition n° 25.3.2 have been declared; and

- (e) where required by Article 4.1 of the Specific decision, an operational verification report (“operational verification report”), produced by an independent third party approved by the Agency and drawn up in accordance with Annex VII.

This report shall state that the actual implementation of the work programme as described in the interim or final report complies with the conditions set out in the Framework decision and the Specific decision.

The partner shall certify that the information provided in the request for interim payment or for payment of the balance is full, reliable and true. It shall also certify that the costs incurred can be considered eligible in accordance with Framework decision and the Specific decision and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in General Condition n° 27. In addition, for the payment of the balance, it shall certify that all the receipts referred to in General Condition n° 25.3.2 have been declared.

### **23.3 Non-submission of documents**

Where the partner has failed to submit a request for interim payment or payment of the balance accompanied by the documents referred to above within 60 days following the end of the corresponding reporting period and where the partner still fails to submit such a request within 60 days following a written reminder sent by the Agency, the Agency reserves the right to terminate the Specific decision in accordance with General Condition n° 16.2.2(b), with the effects described in the second and the third subparagraphs of General Condition n° 16.3.

### **23.4 Currency for requests for payment and financial statements and conversion into euro**

Requests for payment and financial statements shall be drafted in euro.

Where the partner keeps its general accounts in a currency other than the euro, it shall convert costs incurred in another currency into euro at the average of the daily exchange rates published in the C series of *Official Journal of the European Union*, determined over the corresponding reporting period. Where no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, conversion shall be made at the average of the monthly accounting rates established by the Commission and published on its website ([http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)), determined over the corresponding reporting period.

Where the partner keeps its general accounts in euro, it shall convert costs incurred in another currency into euro according to its usual accounting practices.

## **GENERAL CONDITION N° 24 – PAYMENTS AND PAYMENT ARRANGEMENTS**

### **24.1 Pre-financing**



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

Without prejudice to General Condition n° 24.6, where Article 4.1 of the Specific decision provides for a pre-financing payment upon notification of the Specific decision, the Agency shall pay to the partner within 30 days following that date or, where required by Article 4.1 of the Specific decision, following receipt of the financial guarantee.

Where payment of pre-financing is conditional on receipt of a financial guarantee, the financial guarantee shall fulfill the following conditions:

- (a) it is provided by a bank or an approved financial institution or, at the request of the partner and acceptance by the Agency, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the Agency and/or the Commission to have recourse against the principal debtor (i.e. the partner); and
- (c) it provides that it remains in force until the pre-financing is cleared against interim payments or payment of the balance by the Agency and, in case the payment of the balance is made in the form of a debit note, three months after the debit note is notified to the partner. The Agency shall release the guarantee within the following month.

#### **24.2 Further pre-financing payments**

Without prejudice to General Conditions n° 24.5 and 24.6, on receipt of the documents referred to in General Condition n° 23.1, the Agency shall pay to the partner the new pre-financing instalment within 60 days.

Where the statement on the use of the previous pre-financing instalment submitted in accordance with General Condition n° 23.1 shows that less than 70% of the previous pre-financing instalment paid has been used to cover costs of the work programme, the amount of the new pre-financing to be paid shall be reduced by the difference between the 70% threshold and the amount used.

#### **24.3 Interim payments**

Interim payments are intended to reimburse or cover the eligible costs incurred for the implementation of the work programme during the corresponding reporting periods.

Without prejudice to General Conditions n° 24.5 and 24.6, on receipt of the documents referred to in General Condition n° 23.2, the Agency shall pay to the partner the amount due as interim payment within the time limit specified in Article 4.2 of the Specific decision.

This amount shall be determined following approval of the request for interim payment and of the accompanying documents and in accordance with the fourth, fifth and sixth subparagraphs. Approval of the request for interim payment and of the accompanying documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Without prejudice to any ceiling set out in Article 4.1 of the Specific decision and to General Conditions n° 24.5 and 24.6, the amount due as interim payment shall be determined as follows:

- (a) where, in accordance with Article 3(a) of the Specific decision, the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate specified in that Article to the eligible costs of the work programme approved by the Agency for the concerned reporting period and the corresponding categories of costs, for the partner and its affiliated entities; if Article 4.1 of the Specific decision specifies another reimbursement rate, this other rate shall be applied instead;
- (b) where, in accordance with Article 3(b) of the Specific decision, the grant takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified in that Article by the actual number of units approved by the Agency for the concerned reporting period for the partner and its affiliated entities;
- (c) where, in accordance with Article 3(c) of the Specific decision, the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the partner and its affiliated entities, subject to approval by the Agency of the proper implementation during the concerned reporting period of the corresponding tasks or part of the work programme in accordance with Annex I of the Specific decision;
- (d) where, in accordance with Article 3(d) of the Specific decision, the grant takes the form of a flat-rate contribution, the amount obtained by applying the flat rate referred to in that Article to the eligible costs or to the contribution accepted by the Agency for the concerned reporting period for the partner and its affiliated entities.

Where Article 3 of the Specific decision provides for a combination of different forms of grant, these amounts shall be added.

Where Article 4.1 of the Specific decision requires that the interim payment clears all or part of the pre-financing paid to the partner, the amount of pre-financing to be cleared shall be deducted from the amount due as interim payment, as determined in accordance with the fourth and fifth subparagraphs.

#### **24.4 Payment of the balance**

The payment of the balance, which may not be repeated, is intended to reimburse or cover after the end of the period set out in Article 2.2 of the Specific decision the remaining part of the eligible costs incurred by the partner for its implementation. Where the total amount of earlier payments is greater than the final amount of the grant determined in accordance with General Condition n° 25, the payment of the balance may take the form of a recovery as provided for by General Condition n° 26.

Without prejudice to General Conditions n° 24.5 and 24.6, on receipt of the documents referred to in General Condition n° 23.2, the Agency shall pay the amount due as the balance within the time limit specified in Article 4.2 of the Specific decision.

This amount shall be determined following approval of the request for payment of the balance and of the accompanying documents and in accordance with the fourth subparagraph. Approval of the request for payment of the balance and of the accompanying documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

The amount due as the balance shall be determined by deducting, from the final amount of the grant determined in accordance with General Condition n° 25, the total amount of pre-financing and interim payments already made.

#### **24.5 Suspension of the time limit for payment**

The Agency may suspend the time limit for payment specified in Article 4.2 of the Specific decision or in General Condition n° 24.2 at any time by formally notifying the partner that its request for payment cannot be met, either because it does not comply with the provisions of the Framework decision and the Specific decision, or because the appropriate supporting documents have not been produced, or because there is doubt about the eligibility of the costs declared in the financial statement.

The partner shall be notified as soon as possible of any such suspension, together with the reasons thereof.

Suspension shall take effect on the date when notification is sent by the Agency. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension exceeds two months, the partner may request a decision by the Agency on whether the suspension is to be continued.

Where the time limit for payment has been suspended following the rejection of one of the technical reports or financial statements provided for by General Condition n° 23 and the new report or statement submitted is also rejected, the Agency reserves the right to terminate the Specific decision in accordance with General Condition n° 16.2.2(b), with the effects described in General Condition n° 16.3.

#### **24.6 Suspension of payments**

The Agency may, at any time during the implementation of a Specific decision, suspend the pre-financing payments, interim payments or payment of the balance:

- (a) if the Agency has evidence that the partner has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant, or if the partner fails to comply with its obligations under the Framework decision or the Specific decision;
- (b) if the Agency has evidence that the partner has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or by the European Atomic Energy Community which were awarded to that partner under similar conditions, provided that those errors, irregularities, fraud or breach of

obligations have a material impact on a specific grant awarded under the Framework decision; or

- (c) if the Agency suspects substantial errors, irregularities, fraud or breach of obligations committed by the partner in the award procedure or in the implementation of the Framework decision or the Specific decision and needs to verify whether they have actually occurred.

Before suspending payments, the Agency shall formally notify the partner of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a) and (b) of the first subparagraph, the necessary conditions for resuming payments. The partner shall be invited to make any observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the partner, the Agency decides to stop the procedure of payment suspension, the Agency shall formally notify the partner thereof.

If no observations have been submitted or if, despite the observations submitted by the partner, the Agency decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the partner, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of the first subparagraph, the definitive conditions for resuming payments or, in the case referred to in point (c) of the first subparagraph, the indicative date of completion of the necessary verification.

The suspension of payments shall take effect on the date when the notification is sent by the Agency.

In order to resume payments, the partner shall endeavour to meet the notified conditions as soon as possible and shall inform the Agency of any progress made in this respect.

The Agency shall, as soon as it considers that the conditions for resuming payments have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify the partner thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation in accordance with General Condition n° 15.1 or to terminate the Specific decision in accordance with General Condition n° 16.1, the partner is not entitled to submit any requests for payments and supporting documents referred to in General Condition n° 23.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments in accordance with the schedule laid down in Article 4 of the Specific decision.

#### **24.7 Notification of amounts due**

The Agency shall formally notify the amounts due, specifying whether it is a further pre-financing payment, an interim payment or the payment of the balance. In the case of payment

of the balance, it shall also specify the final amount of the grant determined in accordance with General Condition n° 25.

#### **24.8 Interest on late payment**

On expiry of the time limits for payment specified in Article 4.2 of the Specific decision and in General Conditions n° 24.1 and 24.2, and without prejudice to General Conditions n° 24.5 and 24.6, the partner is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros ("the reference rate"), plus three and a half points. The reference rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

The first subparagraph shall not apply where the partner is a Member State of the Union, including regional and local government authorities and other public bodies acting in the name and on behalf of the Member State.

The suspension of the time limit for payment in accordance with General Condition n° 24.5 or of payment by the Agency in accordance with General Condition n° 24.6 may not be considered as late payment.

Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in General Condition n° 24.10. The interest payable shall not be considered for the purposes of determining the final amount of grant within the meaning of General Condition n° 25.3.

By way of derogation from the first subparagraph, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the partner only upon request submitted within two months of receiving late payment.

#### **24.9 Currency for payments**

Payments by the Agency shall be made in euro.

#### **24.10 Date of payment**

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

#### **24.11 Costs of payment transfers**

Costs of the payment transfers shall be borne in the following way:

- (a) costs of transfer charged by the bank of the Agency and/or the Commission shall be borne by the Agency and/or the Commission;
- (b) costs of transfer charged by the bank of the partner shall be borne by the partner;

- (c) all costs of repeated transfers caused either by the Agency or the partner shall be borne by the one caused the repetition of the transfer.

## **GENERAL CONDITION N° 25 – DETERMINING THE FINAL AMOUNT OF A SPECIFIC GRANT**

### **25.1 Calculation of the final amount**

Without prejudice to General Conditions n° 25.2, 25.3 and 25.4, the final amount of the specific grant shall be determined as follows:

- (a) where, in accordance with Article 3(a) of the Specific decision, the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate specified in that Article to the eligible costs of the work programme approved by the Agency for the corresponding categories of costs, for the partner and its affiliated entities;
- (b) where, in accordance with Article 3(b) of the Specific decision, the grant takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified that Article by the actual number of units approved by the Agency for the partner and its affiliated entities;
- (c) where, in accordance with Article 3(c) of the Specific decision, the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the partner and its affiliated entities, subject to approval by the Agency of the proper implementation of the corresponding tasks or part of the work programme in accordance with Annex I of the Specific decision;
- (d) where, in accordance with Article 3(d) of the Specific decision, the grant takes the form of a flat-rate contribution, the amount obtained by applying the flat rate referred to in that Article to the eligible costs or to the contribution accepted by the Agency for the partner and its affiliated entities.

Where Article 3 of the Specific decision provides for a combination of different forms of grant, these amounts shall be added.

### **25.2 Maximum amount**

The total amount paid to the partner by the Agency may in no circumstances exceed the maximum amount specified in Article 3 of the Specific decision.

Where the amount determined in accordance with General Condition n° 25.1 exceeds this maximum amount, the final amount of the grant shall be limited to the maximum amount specified in Article 3 of the Specific decision.

### **25.3 No-profit rule and taking into account of receipts**

**25.3.1** The specific grant may not produce a profit for the partner, unless specified otherwise in the Framework decision or in the Specific decision. "Profit" shall mean a surplus of the receipts over the eligible costs of the work programme.

**25.3.2** The receipts to be taken into account are the receipts established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the partner, which fall within one of the following two categories:

- (a) income generated by the work programme ; or
- (b) financial contributions specifically assigned by the donors to the financing of the eligible costs of the work programme reimbursed by the Agency in accordance with Article 3(a)(i) of the Specific decision.

**25.3.3** The following shall not be considered as a receipt to be taken into account for the purpose of verifying whether the grant produces a profit for the partner:

- (a) financial contributions referred to in point (b) of General Conditions n° 25.3.2, which may be used by the partner to cover costs other than the eligible costs under the Specific decision;
- (b) financial contributions referred to in point (b) of General Condition n° 25.3.2, the unused part of which is not due to the donor at the end of period set out in Article 2.2 of the Specific decision;
- (c) in case of a specific operating grant, amounts dedicated to the building up of reserves.

**25.3.4** The eligible costs to be taken into account are the eligible costs approved by the Agency for the categories of costs reimbursed in accordance with Article 3(a) of the Specific decision.

**25.3.5** Where the final amount of the grant determined in accordance with General Conditions n° 25.1 and 25.2 would result in a profit for the partner, the profit shall be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the work programme approved by the Agency for the categories of costs referred to in Article 3(a)(i) of the Specific decision. This final rate shall be calculated on the basis of the final amount of the grant in the form referred to in Article 3(a)(i) of the Specific decision, as determined in accordance with General Conditions n° 25.1 and 25.2.

#### **25.4 Reduction for poor, partial or late implementation**

Without prejudice to the right to terminate the Framework decision or a Specific decision referred to in General Condition n° 16 and without prejudice to the right of the Agency to apply penalties referred to in General Condition n° 17, if the work programme is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant initially provided for, in line with the actual implementation of the work programme according to the terms laid down in the Framework decision and the Specific decision.

## **GENERAL CONDITION N° 26 – RECOVERY**

### **26.1 Financial responsibility**

Where an amount is to be recovered under the terms of the Framework decision and any Specific decision, the partner shall repay the Agency the amount in question. The partner shall be responsible for the repayment of any amount unduly paid by the Agency as a contribution towards the costs incurred by its affiliated entities.

### **26.2 Recovery procedure**

Before recovery, the Agency shall formally notify the partner of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery and inviting the partner to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the partner, the Agency decides to pursue the recovery procedure, the Agency may confirm recovery by formally notifying to the partner a debit note (“debit note”), specifying the terms and the date for payment.

If payment has not been made by the date specified in the debit note, the Agency shall recover the amount due:

- (a) by offsetting it against any amounts owed to the partner by the Union or the European Atomic Energy Community (Euratom) (“offsetting”); in exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Agency may recover by offsetting before the due date; the partner’s prior consent shall not be required; an action may be brought against such offsetting before the General Court of the European Union pursuant to Article 263 TFEU;
- (b) by drawing on the financial guarantee where provided for in accordance with Article 4.1 of the Specific decision (“drawing on the financial guarantee”);
- (c) by taking legal action in accordance with General Condition n° 18.2 or with the Framework decision or by adopting an enforceable decision in accordance with General Condition n° 18.3.

### **26.3 Interest on late payment**

If payment has not been made by the date set out in the debit note, the amount due shall bear interest at the rate established in General Condition n° 24.8. Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date when the Agency and/or the Commission actually receives payment in full of the outstanding amount.

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



## **26.4 Bank charges**

Bank charges incurred in connection with the recovery of the sums owed to the Agency and/or the Commission shall be borne by the partner except where Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC applies.

## **GENERAL CONDITION N° 27 – CHECKS, AUDITS AND EVALUATION**

### **27.1 Technical and financial checks or audits and interim and final evaluations**

The Agency and/or the Commission may carry out technical and financial checks and audits in relation to the use of a specific grant. It may also check the statutory records of the partner for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

Information and documents provided in the framework of checks or audits shall be treated on a confidential basis.

In addition, the Agency and/or the Commission may carry out interim or final evaluation of the impact of the project measured against the objective of the Union programme concerned.

Checks, audits or evaluations made by the Agency and/or the Commission may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks, audits or evaluations may be initiated during the implementation of the Specific decision and for a period of five years starting from the date of payment of the balance for the work programme concerned. This period shall be limited to three years if the maximum amount specified in Article 3 of the Specific decision is not more than EUR 60 000.

The check, audit or evaluation procedure shall be deemed to be initiated on the date of receipt of the letter of the Agency or the Commission announcing it.

### **27.2 Duty to keep documents**

The partner shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by its national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance for the work programme concerned.

This period shall be limited to three years if the maximum amount specified in Article 3 of the Specific decision is not more than EUR 60 000.

The periods set out in the first and second subparagraphs shall be longer if there are on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case referred to in General Condition n° 27.7. In such cases, the partner shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

### **27.3 Obligation to provide information**

The partner shall provide any information, including information in electronic format, requested by the Agency and/or the Commission, or by any other outside body authorised by it, in the context of checks, audits or evaluations as referred to in General Condition n° 27.1.

In case the partner does not comply with the obligation set out in the first subparagraph, the Agency and/or the Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the partner as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the partner as undue.

### **27.4 On-the-spot visits**

During an on-the-spot visit, the partner shall allow Agency and/or Commission staff and outside personnel authorised by the Agency and/or by the Commission to have access to the sites and premises where the work programme concerned is or was carried out, and to all the necessary information, including information in electronic format.

It shall ensure that the information is readily available at the moment of the on-the-spot visit and that information requested is handed over in an appropriate form.

In case the partner refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, the Agency and/or the Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the partner as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the partner as undue.

### **27.5 Contradictory audit procedure**

On the basis of the findings made during the audit, a provisional report (“draft audit report”) shall be drawn up. It shall be sent by the Agency and/or the Commission or its authorised representative to the partner, which shall have 30 days from the date of receipt to submit observations. The final report (“final audit report”) shall be sent to the partner within 90 days of expiry of the time limit for submission of observations, unless the observations submitted by the beneficiary lead to further audit work, checks or discussions by the Agency and/or the Commission or its authorised representative.

### **27.6 Effects of audit findings**

On the basis of the final audit findings, the Agency and/or the Commission may take the measures which it considers necessary, including recovery of all or part of the payments made by it under the Specific decision concerned, in accordance with General Condition n° 26.

In the case of final audit findings made after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific

grant, determined in accordance with General Condition n° 25, and the total amount paid to the partner under the Specific decision for the implementation of the work programme.

## **27.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations**

**27.7.1** The Agency and/or the Commission may take all measures which it considers necessary, including recovery of all or part of the payments made by it under a Specific decision, in accordance with General Condition n° 26, where the following conditions are fulfilled:

- (a) the partner is found, on the basis of an audit of other grants awarded to it under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on a specific grant awarded under the Framework decision; and
- (b) the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations is received by the partner within the period referred to in General Condition n° 27.1.

**27.7.2** The Agency and/or the Commission shall determine the amount to be corrected under the Specific decision concerned:

- (a) wherever possible and practicable, on the basis of costs unduly declared as eligible under the Specific decision.

For that purpose, the partner shall revise the financial statements submitted under the Specific decision taking account of the findings and resubmit them to the Agency and/or the Commission within 60 days from the date of receipt of the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific grant concerned, determined in accordance with General Condition n° 25 on the basis of the revised eligible costs declared by the partner and approved by the Agency and/or the Commission, and the total amount paid to the partner under the Specific decision for the implementation of the work programme ;

- (b) where it is not possible or practicable to quantify precisely the amount of ineligible costs under the Specific decision, by extrapolating the correction rate applied to the eligible costs for the grants for which the systemic or recurrent errors or irregularities have been found.

The Agency and/or the Commission shall formally notify the extrapolation method to be applied to the partner, which shall have 60 days from the date of receipt to submit observations and to propose a duly substantiated alternative method.

If the Agency and/or the Commission accepts the alternative method proposed by the partner, it shall formally notify the partner thereof and determine the revised eligible costs by applying the accepted alternative method.

If no observations have been submitted or if the Agency and/or the Commission does not accept the observations or the alternative method proposed by the partner, the Agency and/or the Commission shall formally notify the partner thereof and determine the revised eligible costs by applying the extrapolation method initially notified to the partner.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific grant concerned, determined in accordance with General Condition n° 25 on the basis of the revised eligible costs after extrapolation, and the total amount paid to the partner under the Specific decision for the implementation of the work programme ; or

- (c) where ineligible costs cannot serve as a basis for determining the amount to be corrected, by applying a flat rate correction to the specific grant, having regard to the principle of proportionality.

The Agency and/or the Commission shall formally notify the flat rate to be applied to the partner, which shall have 60 days from the date of receipt to submit observations and to propose a duly substantiated alternative flat rate.

If the Agency and/or the Commission accepts the alternative flat rate proposed by the partner, it shall formally notify the partner thereof and correct the grant amount by applying the accepted alternative flat rate.

If no observations have been submitted or if the Agency and/or the Commission does not accept the observations or the alternative flat rate proposed by the partner, the Agency and/or the Commission shall formally notify the partner thereof and correct the grant amount by applying the flat rate initially notified to the partner.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the specific grant concerned after flat-rate correction and the total amount paid to the partner under the Specific decision for the implementation of the work programme .

## **27.8 Checks and inspections by OLAF**

The European Anti-Fraud Office (OLAF) shall have the same rights as the Agency and the Commission, notably right of access, for the purpose of checks and investigations.

By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, EURATOM) No 883/2013 of the European Parliament and the Council

of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), 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, OLAF findings may lead to recovery by the Agency and/or the Commission.

### **27.9 Checks and audits by the European Court of Auditors**

The European Court of Auditors shall have the same rights as the Agency and/or the Commission, notably right of access, for the purpose of checks and audits.