

**GENERAL CONDITIONS APPLICABLE TO HUMANITARIAN AID ACTIONS  
FINANCED BY THE EUROPEAN UNION**

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## **Article 1 Implementation principles**

- a) The Humanitarian Organisation shall implement the Action with the requisite degree of care, efficiency, transparency and diligence, as required by best practice in the field, and in compliance with the Specific Grant Agreement. The Humanitarian Organisation shall take every precaution to ensure that the staff and supplies used for the implementation of the Action are adequately protected from any form of harm and damage and are fully insured, whenever insurance is possible and cost-effective.
- b) The Humanitarian Organisation shall make every effort to mobilise all the financial, human and material resources required for the full implementation of the Action, endeavouring to use local human and material resources.
- c) The Action shall be properly implemented, based on clear and verifiable objectives, and its results, being assessed through specific, measurable, achievable, relevant and time-bound indicators, must be achieved within the agreed period.

## **Article 2 Entry into force of the Specific Grant Agreement**

- a) Irrespective of the start date of the Action laid down in Article 2(2) of the Specific Grant Agreement:
  - (i) where the draft Specific Grant Agreement is sent by the Commission to the Humanitarian Organisation through registered postal delivery with return receipt, it shall enter into force on the date of receipt by the Commission of one original document duly signed and returned by the Humanitarian Organisation;
  - (ii) where the draft Specific Grant Agreement is sent and is to be concluded electronically, it shall enter into force on the date of receipt by the Commission of the protected electronic document, duly signed and returned by the Humanitarian Organisation through the electronic exchange system referred to in Article 4(1)(a) herein.
- b) The authorised representative of the Humanitarian Organisation shall sign the draft Specific Grant Agreement and shall transmit it to the Commission within 15 calendar days following its receipt. When justified, the Commission may consider that the signed Specific Grant Agreement is valid although it was transmitted after this deadline.
- c) Under no circumstances whatsoever may the Humanitarian Organisation make changes to the draft Specific Grant Agreement sent for signature.

## **Article 3 Implementing Partners**

### **3.1 Entrusting tasks forming part of the Action to Implementing Partners**

- a) The Humanitarian Organisation may entrust tasks forming part of the Action on a non-profit basis to one or several Implementing Partners, based on agreements to that effect.
- b) The following conditions shall be complied with:

(i) the prospect of having recourse to Implementing Partners shall be presented, explained and justified in the Single Form, having regard to the nature of the Action and the necessities linked to its implementation; and

(ii) the estimated budget share that would be allocated to the activities carried out by Implementing Partners is provided in the Single Form.

### **3.2 Responsibility for activities implemented by Implementing Partners**

The Humanitarian Organisation shall ensure that the conditions applicable to it under the Specific Grant Agreement, in particular Articles 6, 7, 8, 9, 21, 22, 23, 24, 25 and 26 herein are also applicable to Implementing Partners. The Humanitarian Organisation is and remains fully responsible for all activities implemented by its Implementing Partners and shall ensure and guarantee an effective management and control of the whole Action.

## **Article 4 Transmission of documents**

### **4.1 Means of transmission**

a) Without prejudice to Article 2(a) herein, communication relating to the Specific Grant Agreement shall be made in writing via the electronic exchange system developed by the Commission and to which the Humanitarian Organisation has been granted access pursuant to Article 10(2) of the Framework Partnership Agreement.

b) By way of exception from Article 4(1)(a) herein, where access to the electronic exchange system is not technically possible, communication relating to the Specific Grant Agreement may be made either by e-mail or by postal delivery, mentioning the number of the Specific Grant Agreement:

(i) when such communication is made by the Commission through e-mail, it shall be sent to the official e-mail address of the Humanitarian Organisation identified in the Single Form. Communication by postal delivery shall be sent to the postal address of the Humanitarian Organisation supplied through the electronic exchange system; and

(ii) when such communication is made by the Humanitarian Organisation by e-mail, it shall be sent to the contact person in the Commission responsible for the Specific Grant Agreement. When such communication is made by the Humanitarian Organisation by postal delivery, it shall be sent to the postal address of the Commission indicated in Article 10(1)(c) of the Framework Partnership Agreement. Failure to abide by these obligations shall result in the communication not being considered as received.

c) In situations referred to in Article 4(1)(b) herein, and where the Specific Grant Agreement requires that a Party formally notifies the other Party, the communication shall be made either by registered postal delivery with return receipt or through equivalent electronic means, provided they allow a certification of receipt.

d) In situations referred to in Article 4(1)(b) and 4(1)(c) herein, if requested by any of the Parties, electronic communication shall be confirmed by an original signed paper version of that communication, provided that this request is submitted without unjustified delay. The

sender shall send the original signed paper version no later than 15 calendar days following receipt of the request.

#### **4.2 Date of communication**

a) Communication made in the electronic exchange system is deemed to have been received by the receiving Party on the day of its successful submission.

b) When communication is made through e-mail or postal delivery pursuant to Article 4(1)(b) herein:

(i) e-mail shall be deemed to have been received by the receiving Party on the day of successful dispatch of that communication, provided that it is sent to the addresses referred to in Article 4(1)(b) herein; and

(ii) postal delivery sent to the Commission without return receipt is considered to have been received on the date on which it is registered by the Commission.

#### **4.3 Language**

Any exchange of documents between the Parties relating to the Specific Grant Agreement shall be drafted in the language in which the Specific Grant Agreement was established.

#### **Article 5 Duty of full information sharing**

a) The Humanitarian Organisation shall inform the Commission immediately of any circumstances likely to hamper or delay the implementation of the Action, or the fulfilment of its contractual obligations.

b) The Humanitarian Organisation shall endeavour to inform the Commission of any relevant external reports, publications and press releases relating to the Action.

c) The Commission may request specific information related to the implementation of the Action at any time. The Humanitarian Organisation shall submit this information as soon as possible, at the latest within 30 calendar days following the request.

d) Without prejudice to Article 6(2) herein, the Humanitarian Organisation shall immediately inform the European Commission in writing in the event of it becoming aware of any corrupt, fraudulent, collusive or coercive practice or breach of the Specific Grant Agreement.

#### **Article 6 Conflict of interest**

##### **6.1 Obligation to prevent situations of conflict of interest**

The Humanitarian Organisation shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Specific Grant Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest with another party or person (hereinafter referred to as 'conflict of interest').

## **6.2 Obligation to notify and rectify situations of conflict of interest**

- a) Notwithstanding Article 5(d) herein, in case of any situation constituting or likely to lead to a conflict of interest during the implementation of the Specific Grant Agreement, the Humanitarian Organisation shall notify the Commission in writing and without delay.
- b) The Humanitarian Organisation shall immediately take all the necessary steps to rectify this situation and inform the Commission accordingly. The Commission reserves the right to verify that the measures taken are appropriate, and may require additional measures to be taken by the Humanitarian Organisation within a specified deadline. Failure to implement the requested measures may lead to the termination of the Specific Grant Agreement.
- c) If the Commission has evidence that a situation constitutes or may lead to a conflict of interest, it shall immediately inform the Humanitarian Organisation requesting appropriate measures to be taken. In such a case, the provisions of Article 6(2)(b) herein shall apply.

## **Article 7 Visibility, communication and information**

### **7.1 Visibility**

- a) The Humanitarian Organisation shall take all necessary steps to publicise the fact that the Union has funded the Action, and to bring the support given by the Union to the attention of the beneficiaries and of the general public, in particular through the media. To that effect, the Humanitarian Organisation shall include in particular the visual identity of Union-funded humanitarian aid ([http://ec.europa.eu/echo/media/identity\\_en.htm](http://ec.europa.eu/echo/media/identity_en.htm)) in conjunction with its own logo, where and when it is displayed in connection with the implementation of the Action.
- b) Such measures shall comply with the Communication and Visibility Manual for European Union Humanitarian Aid published by the European Commission ([http://ec.europa.eu/echo/partners/humanitarian\\_aid/visibility\\_en.htm](http://ec.europa.eu/echo/partners/humanitarian_aid/visibility_en.htm)).
- c) The Humanitarian Organisation shall provide evidence of implementation of visibility activities referred to in Article 7(1)(a) and 7(1)(b) herein in the Final Narrative Report.

### **7.2 Communication and information**

- a) In any type of public communication activities linked to the Union-funded Action (audio-visual productions, websites or pages, media contacts, journalists' visits, paid advertising, printed publications, public events etc.), the Humanitarian Organisation commits to highlight its partnership with the European Union and to bring the support given by the European Union to the attention of the beneficiaries and of the general public.
- b) The Humanitarian Organisation shall provide evidence of implementation of activities referred to in this Article in the Final Narrative Report.

### **7.3 Disclaimer**

Information, communication and publications issued in relation to a Union-funded Action, in any form and medium, including the Internet, shall include the following text or a similar disclaimer:

*"This document covers humanitarian aid activities implemented with the financial assistance of the European Union. The views expressed herein should not be taken, in any way, to reflect the official opinion of the European Union, and the European Commission is not responsible for any use that may be made of the information it contains."*

#### **7.4 Use of the European Union emblem**

The obligation to display the European Union emblem does not confer to the Humanitarian Organisation any right, in particular of an exclusive use. Consequently, the Humanitarian Organisation shall not appropriate the European Union emblem or any similar trademark or logo, either by registration or by any other means. However, for the purposes of complying with Articles 7(1) and 7(2) herein, the Humanitarian Organisation is exempted from the obligation to obtain prior permission from the Commission to use the European Union emblem.

#### **7.5 Derogation from the visibility, communication and information obligations**

The Parties may agree in writing, including through a provision laid down in Article 6 (2) of a Specific Grant Agreement, to derogate from the obligations set out in this Article, where the visibility, communication or information activities may harm the implementation of the Action, the safety of the staff of the Humanitarian Organisation or its Implementing Partners, or the safety of beneficiaries or the local community.

#### **7.6 Failure to comply with visibility, communication and information obligations**

If the Humanitarian Organisation breaches any of its obligations under Articles 7(1) and 7(2) herein, the Commission may either reduce the grant in accordance with Article 18(10) or impose a financial penalty on the Humanitarian Organisation, equal to 2% of the Union's contribution in accordance with Article 28 herein, or both. Such a breach may also lead to suspension of payments in accordance with Article 18(12) herein, termination of the Specific Grant Agreement in accordance with Article 15 herein and administrative penalties in accordance with Article 28 herein.

### **Article 8 Eligible costs**

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

"Eligible costs" of the Action are costs actually incurred by the Humanitarian Organisation which meet the following criteria:

- a) they are incurred in connection with the Action as described in the Single Form and are necessary for its implementation;
- b) they are incurred during the eligibility period of the Action set out in Article 2(3) of the Specific Grant Agreement, namely, in the case of services and works, they relate to activities performed during the eligibility period of the Action, and, in the case of supplies, they relate to supplies used during the eligibility period of the Action.



Notwithstanding the above, costs of the preparation of the Final Report, post-distribution monitoring, or final evaluation or audit of the Action shall also be deemed eligible, even if incurred after the eligibility period of the Action;

c) they are identifiable and verifiable, in particular being recorded in the accounting records of the Humanitarian Organisation, are determined according to the applicable accounting standards of the country where the Humanitarian Organisation is established and with the usual cost accounting practices of the Humanitarian Organisation, and backed by supporting evidence;

d) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency;

e) they are covered by the budget of the Action, set out in the Financial Statement of the Action annexed to the Single Form; and

f) they comply with the requirements of applicable tax and social legislation.

## **8.2 Eligible direct costs**

"Direct costs" of the Action are those specific costs which are directly linked to the implementation of the Action, which would not have been incurred had the Action not taken place and can therefore be attributed directly to it. They may not include any indirect costs. In particular, the categories of costs mentioned below are eligible direct costs, provided that they satisfy the conditions of eligibility set out in Article 8(1) herein, as well as the following conditions:

a) the costs of personnel assigned to the Action working under an employment contract with the Humanitarian Organisation or an equivalent appointing act. These costs may include actual salaries plus social security contributions, staff insurance costs and other statutory costs included in the remuneration, provided that these costs are in line with the Humanitarian Organisation's usual policy on remuneration. Personnel 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, and independently from the source of funding used. Costs incurred with regard to severance payments due at the end of employment contracts may be eligible, provided that such payments arise from a statutory obligation under the applicable labour law. Only the portion of severance payments which corresponds to the share of the total working time under the employment contract spent on the Action is taken into account.

The costs of natural persons working under a contract with the Humanitarian Organisation other than an employment contract (e.g. in-house consultants, advisors) may be assimilated to such costs of personnel, provided that the following conditions are fulfilled:

(i) the natural person works under the instructions of the Humanitarian Organisation and, unless otherwise agreed, in the premises of the Humanitarian Organisation;

(ii) the result of the work belongs to the Humanitarian Organisation; and

(iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the Humanitarian Organisation.

The costs of allowances and other benefits for volunteers assigned to the Action by the Humanitarian Organisation may also be assimilated to such costs of personnel.

b) costs of travel and related subsistence allowances for employees taking part in the Action, including headquarters' employees conducting field monitoring missions, provided that these costs are directly linked to the Action, and are in line with the Humanitarian Organisation's usual practices on travel. In the case of missions covering several projects, only the portion of the costs of travel and related subsistence allowances which corresponds to the share of the total mission time spent on the Action is taken into account;

c) the depreciation, rental, lease or purchase costs of equipment, both new or second-hand, used in connection with the Action, subject to the provisions of Articles 9(1), 10(1), 10(2) and 10(3) herein;

d) costs of goods directly assigned to the Action, and of the related transport, storage and distribution costs, subject to the provisions of Articles 9(1) and 10(4) herein;

e) costs arising directly from requirements imposed by the Specific Grant Agreement (e.g. bank fees for transfers to the country of operation, dissemination of information, evaluation or monitoring of the Action, quality assurance measures, insurance costs not related to personnel or volunteers, translations, reproduction), provided that the corresponding services are purchased in accordance with Article 9(1) herein;

f) costs entailed by Implementing Partners, pursuant to Article 3 herein;

g) the financial support to beneficiaries, including financial support distributed in cash and the costs of its distribution, subject to the conditions established in Article 11 herein;

h) costs of infrastructure in the field in particular field offices, directly linked to the Action. Only the portion of the costs which corresponds to the rate of actual use of the infrastructure for the purposes of the Action is taken into account; and

i) without prejudice to Article 18(1) herein, costs related to accepting or distributing contributions in-kind by other donors, including the running costs of equipment donated in-kind, may be considered eligible where mentioned in the Single Form and if directly linked to the implementation of the Action.

### **8.3 Eligible indirect costs**

"Indirect costs" of the Action are those costs which are not specific costs directly linked to the implementation of the Action and can therefore not be attributed directly to it. They may not include any costs identifiable or declared as eligible direct costs.

a) Unless otherwise specified in the Specific Grant Agreement, eligible indirect costs shall be declared on the basis of a flat rate of 7% of the total eligible direct costs, unless it is the policy of the Humanitarian Organisation to claim a lower percentage of indirect costs.

b) Indirect costs shall not be eligible under a grant for an Action awarded to a Humanitarian Organisation which already receives an operating grant financed from the Union budget during the eligibility period of the Action.

c) Contributions in-kind made by other donors may never be used as a basis for the calculation of indirect costs paid by the Commission.

#### **8.4 Ineligible costs**

In addition to any other costs which do not fulfil the conditions set out in Article 8(1) herein, the following costs shall not be considered eligible:

a) debt and debt service charges;

b) provisions for potential future losses or for debts;

c) interest owed;

d) doubtful debts;

e) costs of purchases of land or buildings other than those identified in Article 8(2)(h) herein, unless otherwise specified in the Specific Grant Agreement;

f) currency exchange losses;

g) costs of transfers from the Commission charged by the bank of the Humanitarian Organisation;

h) contributions in-kind from third parties;

i) excessive or reckless expenditure; and

j) deductible VAT, and recoverable duties and other charges.

### **Article 9 Award of procurement contracts**

#### **9.1 Eligibility conditions of costs of procurement contracts**

a) When the implementation of the Action requires the award of procurement contracts by the Humanitarian Organisation, the following conditions shall apply:

(i) the procurement supports the timely, efficient and effective achievement of the results of the Action;

(ii) the contract shall be awarded 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 interest; and

(iii) the Humanitarian Organisation shall ensure that the conditions applicable to it under Article 23 herein are also applicable to the contractor.

b) In case of non-compliance with these conditions, the Commission shall deem the related costs ineligible pursuant to Article 8 herein and may terminate the Specific Grant Agreement pursuant to Article 15 herein.

## **9.2 Other procurement principles and obligations**

- a) Any procurement needed in the context of the Action shall be done in accordance with the Principles and Procedures applicable to Procurement Contracts awarded within the framework of Humanitarian Aid Actions financed by the European Union, annexed to the Framework Partnership Agreement (hereinafter referred to as 'Annex III').
- b) The Humanitarian Organisation shall retain sole responsibility for compliance with these procurement provisions.
- c) The Humanitarian Organisation shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis the Commission under the Specific Grant Agreement. The Humanitarian Organisation shall also ensure that the conditions applicable to it under Articles 6, 21, 25 and 27 herein are also applicable to the contractor.
- d) In case of non-compliance with the principles and obligations referred to in Article 9(2)(a) herein, the Commission may reduce the grant pursuant to Article 18(10) herein and may terminate the Specific Grant Agreement pursuant to Article 15 herein.

## **Article 10 Equipment and goods**

### **10.1 Costs related to equipment**

"Equipment" refers to durable items that can be used multiple times over their estimated useful economic lifespan. They comprise of both support equipment, intended to assist the implementation of the Action, and operational equipment, intended for the direct benefit of the beneficiaries.

- a) As a general rule, where the Commission is the single largest donor to the Action, namely it provides the highest individual contribution, new or second-hand equipment used for the Action may be charged under the following options:
  - (i) as depreciation, rental or lease costs, pursuant to Article 10(2) herein;
  - (ii) on the basis of its full purchase price, subject to transfer to another Action or donation pursuant to Article 10(3)(a) and Article 10(3)(b) herein; or
  - (iii) on the basis of its full purchase price, provided it is included in the low value allowance, pursuant to Article 10(3)(d) herein.
- b) When the Commission is not the single largest donor, the Humanitarian Organisation is exempt from the requirements referred to in Articles 10(1)(a)(ii) and 10(1)(a)(iii) herein, provided that the equipment is used to the benefit of humanitarian actions.

### **10.2 Depreciation, rental or lease costs of equipment**

- a) Depreciation costs are eligible, provided that:
  - (i) the costs are recorded in the accounting statements of the Humanitarian Organisation;

(ii) the equipment is purchased in accordance with Article 9(1) herein and is ultimately paid in full;

(iii) the equipment is written off in accordance with the usual accounting practices of the Humanitarian Organisation, determined according to the applicable accounting standards of the country where the Humanitarian Organisation is established and according to international accounting standards; and

(iv) only the portion of the equipment's depreciation costs, corresponding to the rate of actual use for the purposes of the Action is taken into account.

b) Rental costs of equipment are eligible, provided that only the portion of the equipment's rental costs, corresponding to the rate of actual use for the purposes of the Action is taken into account.

c) Lease costs of equipment are eligible, provided that:

(i) these costs are exclusive of any finance fee; and

(ii) only the portion of the equipment's lease costs, corresponding to the rate of actual use for the purposes of the Action is taken into account.

### **10.3 Costs of the full purchase price of equipment**

The full purchase price of equipment may be eligible subject to the following options:

a) Transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation

Where the Humanitarian Organisation transfers any equipment to another Union-funded humanitarian aid Action of the Humanitarian Organisation, it shall submit with the Final Report information on its destination. Where, at the end of the Action to which the transfer was made, the equipment has not reached the end of its useful economic lifespan, namely it has not been fully depreciated pursuant to Article 10(2)(a)(iii) herein, the obligation to either transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation or to donate pursuant to Articles 10(3)(a) and 10(3)(b) herein shall apply until the end of the equipment's useful economic lifespan.

b) Donation

(i) If transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation is not possible or appropriate, the equipment may be donated to the beneficiaries of the Action, or to local non-profit organisations and local authorities identified as Implementing Partners;

(ii) For duly justified reasons, remaining equipment may also be donated to local non-profit organisations or to local authorities other than Implementing Partners, as well as to International Organisations or international non-governmental organisations. In such a case, the Humanitarian Organisation shall obtain prior agreement of the Commission pursuant to Article 12(2) herein. Under no circumstances may the equipment be donated to for-profit entities;

(iii) In all cases, the Humanitarian Organisation shall submit with the Final Report information on the equipment's destination and shall retain documentary proof, namely a donation certificate.

c) Derogation from the obligation to transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation or from the obligation to donate

The Commission may, pursuant to Article 12(2) herein, agree to a derogation from the obligation to transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation or to donate, in particular where the equipment's nature is specialised, sensitive or requires expert handling (e.g. de-mining equipment), and provided that the Humanitarian Organisation pledges to use the retained equipment for the benefit of humanitarian actions until the end of its useful economic lifespan.

d) Allowance for low value equipment

(i) Any equipment, the cost of which does not exceed EUR 750 per item, shall be exempt from the obligation of transfer or donation under Article 10(3)(a) and 10(3)(b) herein.

(ii) Where the individual purchase cost of the equipment exceeds EUR 750 but does not exceed EUR 2 500 per item, it shall be exempt from the obligation of transfer or donation under Article 10(3)(a) and 10(3)(b) herein, provided that the total costs of the retained equipment items does not exceed EUR 15 000. The costs must be itemised, verifiable and reflected in the Final Report, pursuant to Article 16(3)(e) herein.

(iii) The Humanitarian Organisation pledges to use the retained equipment for the benefit of humanitarian actions.

#### **10.4 Use of remaining goods at the end of the Action's implementation period**

"Goods" refer to items intended for direct consumption or use by the beneficiaries. At the end of the Action's implementation period, remaining goods are subject to the following obligations:

a) Transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation

Whenever the Commission is the single largest donor, remaining goods not distributed to beneficiaries by the end of the implementation period of the Action or used in connection with the Action before the end of the reporting period may be transferred to another Union-funded humanitarian aid Action of the Humanitarian Organisation, provided that their destination is indicated in the Final Report. All goods shall either be used or shall be donated pursuant to Article 10(4)(b) herein at the end of the Action to which they were transferred.

b) Donation

(i) If transfer to another Union-funded humanitarian aid Union-funded Action of the Humanitarian Organisation is not possible or appropriate, the remaining goods may be

donated to local communities, or to non-profit organisations and local authorities identified as Implementing Partners.

(ii) In duly justified cases, remaining goods may also be donated to local non-profit organisations or local authorities other than Implementing Partners, as well as to International Organisations and international non-governmental organisations. In such a case, the Humanitarian Organisation shall obtain prior agreement of the Commission pursuant to Article 12(2) herein. Under no circumstances may the remaining goods be donated to for-profit entities.

(iii) In all cases, the Humanitarian Organisation shall submit with the Final Report information on the destination of the goods and shall retain documentary proof, namely a donation list or donation certificate.

c) Derogation from the obligation to transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation or from the obligation to donate

(i) The Commission may, pursuant to Article 12(2) herein, agree to a derogation from the obligation to transfer to another Union-funded humanitarian aid Action of the Humanitarian Organisation or from the obligation to donate, in particular where the nature of the goods requires expert handling (e.g. nutrition or health-related goods).

(ii) The Humanitarian Organisation pledges to use the retained goods for the benefit of humanitarian actions.

d) Remaining goods with a value of up to EUR 750 per category of items, namely identical or similar items used for the same purpose, are excluded from the obligation of transfer or donation. The Humanitarian Organisation pledges to use these to the benefit of humanitarian actions.

#### **Article 11 Financial support to beneficiaries**

a) Where the implementation of the Action requires giving financial support to beneficiaries, the Humanitarian Organisation shall give such financial support in accordance with the Single Form, which shall at least contain:

(i) the maximum amount of financial support per beneficiary;

(ii) the criteria for determining the exact amount of the financial support;

(iii) the purpose of the financial support;

(iv) the definition of the persons or categories of persons which may receive financial support;

(v) the criteria for giving the financial support; and

(vi) in case of conditional financial support, namely where the beneficiaries are required to fulfil a specific obligation or carry out an activity to receive the support, the types of activities or obligations in question;

(vii) appropriate monitoring and supervision mechanisms, in accordance with the relevant Commission guidance on financial support to beneficiaries.

b) By way of derogation from Article 11(a) herein, when the financial support takes the form of a prize, the Humanitarian Organisation shall give such financial support in accordance with the Single Form, which shall at least contain:

(i) the conditions for participation;

(ii) the award criteria;

(iii) the amount of the prize;

(iv) the payment arrangements; and

(v) the conditions and criteria for the appointment of an independent jury awarding the prize.

## **Article 12 Amendment of the Specific Grant Agreement**

### **12.1 Scope and form of the amendment**

a) Any amendment of the Specific Grant Agreement shall be done in writing. Amendments shall not have the purpose or effect of making changes to the Specific Grant Agreement, which would call into question the award of the grant or be contrary to the equal treatment of partners.

b) The Specific Grant Agreement may be amended only until the final payment is made.

### **12.2 Amendment by mutual consent**

a) When the amendment request affects Articles 2, 3, 4, 5 or 6 of the Specific Grant Agreement, or the title, principal and specific objective, results, indicators related to the specific objective and results, number and type of beneficiaries, country and/or region of implementation, use of remote management, or the financial support provided for in Article 11 herein, the Party requesting the amendment shall send to the other Party a duly justified amendment request.

b) The amendment request shall be made in due time and in any case no later than 30 calendar days before the end date of the Action set out in the Specific Grant Agreement, unless the Parties agree to a shorter time-limit. In exceptional cases, the Humanitarian Organisation may request an amendment after the end of the implementation period of the Action, and at the latest with the Final Report.

c) The Party being requested an amendment commits to inform in writing the other Party of its acceptance or rejection of the proposed amendment no later than 30 calendar days from receipt of the request. If the request for amendment is made by the Humanitarian Organisation after the end of the implementation period of the Action or with the Final Report, the Commission shall notify its acceptance or rejection of the proposed amendment with the notification of final payment pursuant to Article 18(11) herein.



d) The amendment shall enter into force on the date on which the last Party gives its approval. The amendment shall take effect on the date of its entry into force, unless the Parties agree otherwise.

### **12.3 Clerical errors**

Clerical errors are unintentional additions, omissions or typographical errors made in the text of the Specific Grant Agreement.

a) In case of a clerical error in the text of the Specific Grant Agreement, the Parties shall inform each other as soon as the error is identified and the text shall be rectified by mutual consent.

b) The clerical error shall not affect the validity of the Specific Grant Agreement.

### **12.4 Budget transfers**

Provided that the Action is implemented as described in the Single Form, the Humanitarian Organisation may adjust the estimated budget set out in the Financial Statement of the Action annexed to the Single Form, by transfers between the different budget headings, without this adjustment being considered as an amendment of the Specific Grant Agreement within the meaning of Article 12(2) herein.

### **12.5 Notification of non-essential changes**

In case of changes that affect other elements than those specified in Article 12(2) herein, the Humanitarian Organisation shall inform the Commission of these in accordance with Article 4 herein.

## **Article 13 Force majeure**

"*Force majeure*" shall mean any unforeseeable exceptional situation or event beyond the Parties' control, which prevents either of them from fulfilling any or part of their obligations under the Specific Grant Agreement, which is not attributable to error or negligence on their part or on the part of Implementing Partners or contractors, and which proves to be inevitable in spite of all due diligence.

a) Any default of a service, defect in equipment or material, delays in making them available or financial difficulties, cannot be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*.

b) A Party faced with *force majeure* shall formally notify the other Party without delay, namely as soon as the circumstances so allow, stating the nature of the situation and its foreseeable effects.

c) The Parties shall take the necessary measures to limit any damage due to *force majeure*.

d) The Party faced with *force majeure* shall not be considered to be in breach of its obligations under the Specific Grant Agreement if it has been prevented from fulfilling them by *force majeure*, and has notified the other Party without delay.

## **Article 14 Suspension of the implementation of the Action**

### **14.1 Suspension of the implementation of the Action by the Humanitarian Organisation**

- a) The Humanitarian Organisation may suspend the implementation of the Action or any part thereof if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*, a serious threat to the safety and security of humanitarian workers or beneficiaries, or the inability to ensure compliance with the humanitarian principles.
- b) The Humanitarian Organisation shall inform the Commission of the suspension without delay, namely as soon as the circumstances so allow, giving all the necessary reasons and details, as well as the foreseeable date of resumption.
- c) The Humanitarian Organisation shall endeavour to minimise the time of the suspension and any possible damage, as well as any costs which are unavoidable and necessary to safeguard the conditions for a potential resumption. The Humanitarian Organisation shall resume implementation once circumstances allow, informing the Commission accordingly.
- d) The Humanitarian Organisation shall also inform the Commission of the details of the expenditure connected to the suspended activities, which are expected to be incurred during the suspension period.

### **14.2 Suspension of the implementation of the Action by the Commission**

- a) The Commission may suspend the implementation of the Action or any part thereof:
  - (i) if the Commission has evidence that the Humanitarian Organisation has committed substantial errors, irregularities or fraud in the implementation of the Specific Grant Agreement or if the Humanitarian Organisation fails to comply with its obligations under the Specific Grant Agreement;
  - (ii) if the Commission has evidence that the Humanitarian Organisation has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union which were awarded to the Humanitarian Organisation under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant;
  - (iii) if the Commission suspects that substantial errors, irregularities, fraud or breach of obligations have been committed by the Humanitarian Organisation in the implementation of the Specific Grant Agreement and needs to verify whether they have actually occurred;
  - (iv) if the Commission considers that exceptional circumstances, including *force majeure*, make such implementation excessively difficult or dangerous for the humanitarian workers and beneficiaries;
  - (v) if the Commission considers that there is an incompatibility between the further implementation of the Action and compliance with humanitarian principles.

- b) The Commission shall notify the Humanitarian Organisation of its intention to suspend, specifying the reasons thereof, and where applicable, the necessary conditions for resuming the implementation.
- c) The Humanitarian Organisation shall be invited to submit observations within 15 calendar days from receipt of the notification. The time-limits may be shortened according to the urgency of the matter.
- (i) If the Humanitarian Organisation fails to raise any observations within this time-limit, the suspension shall take effect on the expiry of this time-limit.
  - (ii) If the Humanitarian Organisation raises observations, after examination of those observations, the Commission shall notify the Humanitarian Organisation of its decision on the suspension. If the Commission decides to suspend the Specific Grant Agreement, the suspension shall take effect on the date of receipt of this notification.

### **14.3 Duration and effects of suspension**

- a) If the implementation of the Action can be resumed, an amendment to the Specific Grant Agreement shall be made in accordance with Article 12(2) herein, in order to establish the date on which the Action shall be resumed, to extend the implementation period of the Action by a period equivalent to the duration of the suspension, and to make any other modifications that may be necessary to adapt the Action to the new implementing conditions.
- b) The suspension is deemed to be lifted as from the date of resumption of the Action agreed by the Parties in accordance with Article 14(3)(a) herein.
- c) Where the suspension lasts longer than one-third of the implementation period of the Action any Party may terminate the Specific Grant Agreement in accordance with Article 15(2)(a)(iii) herein.
- d) Any costs incurred by the Humanitarian Organisation during the period of suspension, which are unavoidable and necessary to safeguard the conditions for a potential resumption of the Action or the suspended part thereof, may be eligible provided that the conditions of Articles 8 and 14(1)(d) herein are met.
- e) Neither Party shall be entitled to claim compensation on account of a suspension by the other Party.

## **Article 15 Termination of the Specific Grant Agreement**

### **15.1 Termination by the Humanitarian Organisation**

- a) The Humanitarian Organisation may terminate the Specific Grant Agreement in duly justified cases, for example if changes in circumstances in the field are likely to make it impossible or excessively difficult to continue the implementation of the Action, such as in cases of *force majeure*, serious threat to the safety or security of humanitarian workers or beneficiaries, or the inability to ensure compliance with the humanitarian principles. It shall do so by formally notifying the Commission thereof, clearly stating 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.

b) If no reasons are given by the Humanitarian Organisation, or if the Commission considers that the reasons exposed cannot justify the termination, it shall formally notify the Humanitarian Organisation, specifying the grounds thereof, and the Specific Grant Agreement shall be deemed to have been terminated improperly.

## **15.2 Termination by the Commission**

a) The Commission may decide to terminate the Specific Grant Agreement in the following circumstances:

(i) if a change to the Humanitarian Organisation's legal, financial, technical, organisational or ownership situation is likely to substantially adversely affect the implementation of the Specific Grant Agreement, or if it calls into question the decision to award the grant;

(ii) if the Humanitarian Organisation does not implement the Action as specified in the Single Form or if it fails to comply with another substantial obligation incumbent on it under the terms of the Specific Grant Agreement;

(iii) in the event of *force majeure*, pursuant to Article 13 herein, or in the event of a suspension of the implementation of the Action pursuant to Article 14 herein, where the suspension lasts longer than one third of the implementation period of the Action or where the necessary modifications to the Specific Grant Agreement would call into question the decision awarding the grant;

(iv) if the Humanitarian Organisation 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;

(v) if a Humanitarian Organisation or any related person, as defined in Article 15(2)(b) herein, have been found guilty of grave professional misconduct proven by any justified means;

(vi) if a Humanitarian Organisation 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 Action is implemented;

(vii) if the Commission has evidence that a Humanitarian Organisation or any related person, as defined in Article 15(2)(b) herein, 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;

(viii) if the Commission has evidence that a Humanitarian Organisation or any related person, as defined in Article 15(2)(b) herein, have committed substantial errors,

irregularities or fraud in the implementation of the Specific Grant Agreement, including in the event of submission of false information or failure to submit required information in order to obtain a specific grant;

(ix) if the Commission has evidence that a Humanitarian Organisation has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union which were awarded to that Humanitarian Organisation under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this Specific Grant Agreement; or

(x) where the Commission, in spite of two suspensions of the time-limit for payment within the payment deadline pursuant to Article 18(7) herein, is still not in the position to approve the Final Report presented by the Humanitarian Organisation.

b) For the purposes of Article 15(1)(a) herein "any related person" shall mean any natural person which has the power to represent the Humanitarian Organisation or to take decisions on its behalf.

c) The Commission shall notify the Humanitarian Organisation of its intention to terminate the Specific Grant Agreement, specifying the reasons thereof, and inviting the Humanitarian Organisation to submit observations within 15 calendar days from the receipt of the notification. If the Humanitarian Organisation submits observations, the Commission shall notify the Humanitarian Organisation of its decision on the termination. If the Commission decides to terminate the Specific Grant Agreement despite the observations submitted by the Humanitarian Organisation, the termination shall take effect on the date of receipt of the termination decision's notification. If no observations have been submitted, the termination shall take effect 15 calendar days following the notification by the Commission of the intention to terminate.

### **15.3 Effects of termination**

a) Where the Specific Grant Agreement is terminated, payment by the Commission shall be limited to the amount determined on the basis of the eligible costs incurred by the Humanitarian Organisation pursuant to Article 8 herein and on the basis of the actual level of implementation of the Action on the date when the termination takes effect.

b) The provisions of the Specific Grant Agreement shall continue to apply after the termination, to the extent necessary to allow for the payment of the balance.

c) Costs relating to current commitments, which are not due for execution until after the termination, shall not be taken into account.

d) The Humanitarian Organisation shall have 60 calendar days from the date when the termination takes effect to produce a final payment request in accordance with Article 18(4) herein. If no final payment request is received within this time-limit, the Commission may recover any amount already paid.

e) Where the Commission, in accordance with Article 15(2)(a)(ii) herein, is terminating the Specific Grant Agreement on the grounds that the Humanitarian Organisation has failed to

produce the final payment request and after a reminder has still not complied with this obligation, the provisions of Article 15(3) herein shall apply, subject to the following:

(i) there shall be no additional time period from the date when the termination of the Specific Grant Agreement takes effect for the Humanitarian Organisation to produce a final payment request; and

(ii) the Commission shall recover any amount already paid.

f) Furthermore, where the Specific Grant Agreement is terminated improperly by the Humanitarian Organisation within the meaning of Article 15(1) herein, or where the Specific Grant Agreement is terminated by the Commission on the grounds set out in Article 15(2)(a)(ii), 15(2)(a)(v), 15(2)(a)(vii), 15(2)(a)(viii) and 15(2)(a)(ix) herein, the Commission may apply financial penalties in accordance with Article 28 herein, in proportion to the gravity of the failings in question and after allowing the Humanitarian Organisation to submit its observations.

g) Neither Party shall be entitled to claim compensation on account of a termination by the other Party.

## **Article 16 Reporting and information sharing**

### **16.1 Purpose of reporting**

The purpose of reporting is to provide the Commission with full information on the implementation of the Action, so as to allow it to form an opinion with reasonable assurance on whether the Action was implemented in accordance with the Specific Grant Agreement and to determine which costs are eligible for Union funding.

### **16.2 Interim Report**

a) Where specified in the Specific Grant Agreement, the Humanitarian Organisation shall submit an Interim Report, providing an account of the implementation of the Action for the period covered.

b) The Interim Report shall be made on the standard format provided in the Single Form, and shall focus on the status of the implementation of the Action.

c) The Interim Report shall refer to the whole of the Action as defined in Article 1 of the Specific Grant Agreement, regardless of the scope of the Union contribution.

### **16.3 Final Report**

a) The Humanitarian Organisation shall submit, together with the final payment request referred to in Article 18(4) herein, a Final Report on both the implementation of the Action (hereinafter referred to as 'Narrative Report') and the use of the estimated budget (hereinafter referred to as 'Financial Report').

b) The Final Report shall refer to the whole of the Action as defined in Article 1 of the Specific Grant Agreement, regardless of the scope of the Union contribution.

c) The Final Report shall ensure comparability and traceability with the original proposal, while taking account of any modifications presented in the Single Form, as well as with the internal reporting and accounting systems of the Humanitarian Organisation.

#### **16.3(d) Narrative Report**

- (i) The Narrative Report shall be made on the format of the Single Form and shall provide an overview of the implementation of the Action.
- (ii) The Narrative Report shall in particular assess the level of achievement of the objectives and results envisaged in the proposal, while taking account of any modifications presented in the Single Form.

#### **16.3(e) Financial Report**

The Financial Report shall provide a clear identification of all costs actually incurred as well as of the contributions and revenue of the Action. The Financial Report shall be composed of:

- (i) the Financial Overview of the Action provided in the Single Form;
- (ii) the Financial Statement annexed to the Single Form, providing a breakdown by nature of expenditure of the amounts claimed by the Humanitarian Organisation;
- (iii) the general ledger of the Action annexed to the Single Form, classified by the nature of expenditure claimed; and
- (iv) when relevant, information annexed to the Single Form on transferred or donated equipment pursuant to Article 10(3)(a) and 10(3)(b) herein, on low value equipment referred to in Article 10(3)(d)(ii) herein, and on remaining goods referred to in Article 10(4)(a) and 10(4)(b) herein.

#### **16.4 Formal requirements**

Reports shall be submitted in euro, where necessary pursuant to the provisions on currency exchange in Article 18(5) herein. The general ledger of the Action shall be submitted in the currency of the general accounts.

#### **Article 17 Identification and verifiability of the amounts declared**

- a) Unless otherwise specified in the Specific Grant Agreement, the grant shall take the form of the reimbursement of eligible direct costs declared as actually incurred, and of eligible indirect costs declared on the basis of a flat-rate equivalent to a percentage of the total eligible direct costs.
- b) If requested to do so in the context of the checks or audits referred to in Article 23 herein, the Humanitarian Organisation shall provide adequate supporting documents to prove the eligible direct costs declared as actually incurred, such as contracts, invoices, proof of payments, distribution records and accounting records. In addition, the Humanitarian Organisation'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.

c) Notwithstanding Article 17(a) herein, the Parties may agree that the grant takes the form of the reimbursement of pre-determined unit costs or a pre-determined unit contribution, the reimbursement of pre-determined lump sum costs or a pre-determined lump sum contribution, or the reimbursement of pre-determined flat-rate costs or a pre-determined flat-rate contribution. In such cases, the Specific Grant Agreement shall specify the conditions for the identification and verifiability of the amounts declared.

## **Article 18 Co-financing, payment requests, payment arrangements and determining the final amount of the grant**

### **18.1 Co-financing**

Without prejudice to Article 8(2)(i) herein, contributions in-kind made by other donors may not be considered as co-financing.

### **18.2 Pre-financing**

a) An amount of up to 80% of the Union's contribution to the Action may be provided as pre-financing.

b) The level of pre-financing shall be established taking into account the duration and specificities of the Action, including the risks involved and the past performance of the Humanitarian Organisation in similar contexts. The amount of pre-financing shall be set out in Article 5(1) of the Specific Grant Agreement.

c) The process for the disbursement of the initial pre-financing payment shall be automatically launched by the Commission upon receipt of the signed Specific Grant Agreement and the Humanitarian Organisation need not submit any request for this pre-financing payment. The Commission shall make the pre-financing payment to the Humanitarian Organisation within 30 calendar days following receipt of the signed Specific Grant Agreement.

### **18.3 Further pre-financing payments**

a) Where the Specific Grant Agreement provides for the payment of the pre-financing in more than one instalment, and unless the Specific Grant Agreement sets out other arrangements, the Humanitarian Organisation shall submit a request for any further pre-financing payment, declaring that at least 70% of the first pre-financing instalment has been consumed.

b) The Commission shall pay the new pre-financing instalment within 30 calendar days from the date of receipt of the request for a further pre-financing payment. The request for payment shall include all elements set out in Article 18(4)(b) herein.

### **18.4 Final payment request**

a) The Humanitarian Organisation shall present a request for the payment of the balance within the deadline established in the Specific Grant Agreement.

b) A payment request shall include the Humanitarian Organisation's identification, the amount in euro and the date. Where at least one essential element is missing, the payment request shall be rejected.



c) The payment request shall be accompanied by the following:

- (i) a Final Report drawn up in accordance with Articles 16(3) and 16(4) herein; and
- (ii) a declaration that the information provided in the request for payment is full, reliable and true. The Humanitarian Organisation shall also certify that the costs incurred can be considered eligible in accordance with the Specific Grant Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits provided for in Article 23 herein. In addition, it shall certify that all the receipts referred to in Article 18(9) herein have been declared.

### **18.5 Currency for requests for payment and conversion into euro**

a) Requests for payment shall be drafted in euro.

b) Humanitarian Organisations with general accounts in a currency other than the euro shall convert the costs incurred into euro using the exchange rate published on the website <https://www.ecb.int/stats/exchange/eurofxref/html/index.en.html> for the day on which the Union's first pre-financing payment was recorded in the Humanitarian Organisation's accounts or any other rate agreed between the Parties in the Specific Grant Agreement.

c) The Humanitarian Organisation shall convert costs incurred in any currency other than that of its general accounts into the currency of its general accounts according to its usual accounting practices provided that the accounting practice or rule is applied consistently to all types of transactions and funding sources, and provided the accounting practices can be evidenced.

### **18.6 Payment of the balance**

a) The payment of the balance is intended to reimburse the eligible costs incurred by the Humanitarian Organisation for the implementation of the Action not covered by the pre-financing.

b) The Commission shall pay the balance due to the Humanitarian Organisation in euro within 60 calendar days of the registration of the final payment request. This is without prejudice to the Commission's right to suspend the time-limit for payment pursuant to Article 18(7) herein or to suspend payments pursuant to Article 18(12) herein.

c) The amount due as the balance shall be determined by deducting any payment already made from the final amount of the grant determined in accordance with Article 18(8) herein. Where the total amount of earlier payments is greater than the final amount of the grant, the payment of the balance may take the form of a recovery as provided for in Article 20 herein.

d) The final amount of the grant shall be determined in accordance with Article 18(8) herein and following approval of the final payment request and of the accompanying documents. Approval of the final payment request and of the accompanying documents shall not imply recognition of the proper and timely performance of the Action, of the eligibility of the costs, or of the regularity, authenticity, completeness and correctness of the declarations and information it contains.

**18.7 Suspension of the time-limit for payment**

a) The Commission may suspend the time-limit for payment specified in Article 18(6) herein at any time by notifying the Humanitarian Organisation that its request for payment cannot be met, either because:

- (i) it does not comply with the provisions of the Specific Grant Agreement;
- (ii) the Final Report referred to in Article 16(3) herein has not been submitted;
- (iii) the Final Report does not comply with the requirements of Article 16(3) herein, including where it does not contain a sufficient level of information to allow the final appraisal of the Action; or
- (iv) there is doubt about the eligibility of the costs declared in the Final Report.

b) The Humanitarian Organisation 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 Commission. Unless otherwise agreed by the Parties, the Humanitarian Organisation shall reply within 30 calendar days. 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 or audits under Article 23 herein, are carried out.

c) Where the suspension exceeds 60 calendar days, and this is not attributable to the Humanitarian Organisation's lack of reply, the Humanitarian Organisation may request a decision by the Commission on whether the suspension is to be continued.

d) Where the time-limit for payment has been twice suspended following the Commission's inability to approve the Final Report, the Commission reserves the right to terminate the Specific Grant Agreement in accordance with Article 15(2)(a)(x) herein.

**18.8 Calculation of the final amount**

a) The final amount of the grant shall be determined as the lower amount among the amounts specified below, and following the application of the no-profit rule pursuant to Article 18(9) herein:

- (i) the amount obtained by application of the reimbursement rate specified in Article 3(2) of the Specific Grant Agreement to the eligible costs of the Action approved by the Commission; and
- (ii) the maximum amount of the grant specified in Article 3(2) of the Specific Grant Agreement.

b) Article 18(8)(a) herein shall be without prejudice to the right of the Commission to reduce the amount of the grant in accordance with Article 18(10) herein.

**18.9 No-profit rule and taking into account of receipts**

a) The grant shall not produce a profit for the Humanitarian Organisation. Profit shall mean a surplus of the receipts over the eligible costs of the Action approved by the Commission.

b) The receipts to be taken into account are the consolidated receipts established, generated or confirmed on the date on which the final payment request is drawn up by the Humanitarian Organisation, and which fall within one of the following two categories:

(i) income generated by the Action; or

(ii) financial contributions specifically assigned by other donors to the financing of the eligible direct costs of the Action declared as actually incurred.

c) Any financial contribution referred to in Article 18(9)(b)(ii) herein, which may be used by the Humanitarian Organisation to cover costs other than the eligible costs under the Specific Grant Agreement, or the unused part of which is not due to the other donor at the end of the Action, are not to be considered as a receipt for the purpose of verifying whether the grant produces a profit for the Humanitarian Organisation.

d) Where the final amount of the grant determined in accordance with Article 18(8)(a) herein would result in a profit for the Humanitarian Organisation, the profit shall be deducted in proportion to the final rate of reimbursement of the direct eligible costs of the Action declared as actually incurred and approved by the Commission.

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

a) If the Action is not implemented or is implemented poorly, partially or late, without acceptable justification, the Commission may reduce the grant initially provided for, in line with the actual implementation of the Action, on the basis of the achievement of the results, assessed against the objectively verifiable indicators specified in the Single Form.

b) The Action may be considered to be implemented poorly, partially or late when the Humanitarian Organisation fails to comply with its obligations under the Specific Grant Agreement, in particular with Article 1 herein.

c) Before the reduction of the grant, the Commission shall formally notify the Humanitarian Organisation of its intention to reduce the grant, specifying the amount it intends to reduce and the reasons thereof, and inviting the Humanitarian Organisation to submit observations within 15 calendar days from the receipt of the notification.

d) If no observations have been submitted, or if despite the observations submitted the Commission decides to pursue the reduction, the Commission shall formally notify the Humanitarian Organisation of the confirmation of the reduction.

#### **18.11 Notification of amounts due**

a) The Commission shall notify the Humanitarian Organisation of the payment of the balance and shall also specify the final amount of the grant determined in accordance with Article 18(8) herein.

b) If the Humanitarian Organisation does not agree with the amount notified, it may raise its observations in writing within 30 calendar days of receipt of the notification. The Commission shall provide its response within 30 calendar days following receipt of the observations.

### **18.12 Suspension of payments**

a) The Commission may, at any time during the implementation of the Specific Grant Agreement, suspend any payments:

(i) when it has evidence that the Humanitarian Organisation has committed substantial errors, irregularities or fraud in the proposal presented on the Single Form or in the implementation of the Action, or if the Humanitarian Organisation fails to comply with its obligations under the Specific Grant Agreement;

(ii) when it has evidence that the Humanitarian Organisation has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union which were awarded to the Humanitarian Organisation under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant; or

(iii) if it suspects that substantial errors, irregularities, fraud or breach of obligations have been committed by the Humanitarian Organisation for the purpose of obtaining the grant or in the implementation of the Specific Grant Agreement, and it needs to verify whether they have actually occurred, including by means of on-the-spot checks.

b) Before suspending payments, the Commission shall notify the Humanitarian Organisation of its intention specifying the reasons thereof and, in the cases referred to in Article 18(12)(a)(i) and 18(12)(a)(ii) herein, the necessary conditions for resuming payments. The Humanitarian Organisation shall be invited to make any observations within 30 calendar days from receipt of this notification.

c) If, after examining the observations submitted by the Humanitarian Organisation, the Commission decides to stop the suspension procedure, it shall notify the Humanitarian Organisation thereof.

d) If no observations have been submitted or if, despite the observations submitted by the Humanitarian Organisation, the Commission decides to pursue the suspension, it shall notify the Humanitarian Organisation thereof, specifying the reasons for the suspension. In the cases referred to in Articles 18(12)(a)(i) and 18(12)(a)(ii) herein, the Commission shall also indicate the definitive conditions for resuming payments and, in the case referred to in Article 18(12)(a)(iii) herein, the indicative date of completion of the necessary verification.

e) The suspension shall take effect on the date when the notification of the decision of suspension is sent by the Commission.

f) In order to resume payments, the Humanitarian Organisation shall endeavour to meet as soon as possible the conditions notified by the Commission, and it shall inform the Commission of any progress made in this respect. The Commission shall formally notify the Humanitarian Organisation of the resumption of payments as soon as it considers that the conditions for resuming payments have been met, or that the necessary verification has been carried out.

g) Without prejudice to the right of the Humanitarian Organisation to suspend the implementation of the Action pursuant to Article 14(1) herein or to terminate the Specific Grant Agreement in accordance with Article 15(1) herein, the Humanitarian Organisation shall not be entitled to submit any requests for payments during the period of suspension.

### **18.13 Interest on late payment**

a) On expiry of the time-limits for payment specified in the Specific Grant Agreement, and Articles 18(2), 18(3) and 18(6) herein, and without prejudice to Article 18(7) and 18(12) herein, the Humanitarian Organisation is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (hereinafter referred to as 'the reference rate'), plus three and a half points.

b) 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.

c) The suspension of the time-limit for payment in accordance with Article 18(7) herein or of payments by the Commission in accordance with Article 18(12) herein may not be considered as late payment.

d) 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 Article 18(14) herein. The interest payable shall not be considered for the purposes of determining the final amount of grant within the meaning of Articles 18(8) and 18(11) herein.

e) By way of derogation from Article 18(13)(a) herein, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Humanitarian Organisation only upon request submitted to the Commission within 60 calendar days from the date on which the Humanitarian Organisation received the late payment.

### **18.14 Date of payment**

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

### **18.15 Costs of payment transfers**

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

(a) costs of transfers charged by the bank of the Commission shall be borne by the Commission;

(b) costs of transfers charged by the bank of the Humanitarian Organisation shall be borne by the Humanitarian Organisation;

(c) all costs of repeated transfers caused by one of the Parties shall be borne by the Party who caused the repetition of the transfer.

**18.16 Bank account for payments**

All payments shall be made to the Humanitarian Organisation's bank account indicated in the electronic exchange system. It is the responsibility of the Humanitarian Organisation to notify the Commission in due time of any changes to this data.

**Article 19 Assignment of claims for payments to third parties**

- a) Claims for payments of the Humanitarian Organisation against the Commission may not be assigned to third parties, except in duly justified cases where the situation warrants it.
- b) The assignment shall only be enforceable against the Commission if it has accepted the assignment on the basis of a written and reasoned request to that effect by the Humanitarian Organisation. In the absence of such acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on the Commission.
- c) In no circumstances shall such an assignment release the Humanitarian Organisation from its obligations towards the Commission.

**Article 20 Recovery****20.1 Recovery procedure**

- a) Before recovery, the Commission shall notify the Humanitarian Organisation of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery, and inviting the Humanitarian Organisation to make its observations within a specified period.
- b) If no observations have been submitted or if, despite the observations submitted by the Humanitarian Organisation, the Commission decides to pursue the recovery, it shall confirm this by notifying to the Humanitarian Organisation a debit note, specifying the terms and the date for payment.
- c) If payment has not been made by the Humanitarian Organisation by the date specified in the debit note, the Commission shall recover the amount due:
  - (i) by offsetting it against any amounts owed to the Humanitarian Organisation by the Union or the European Atomic Energy Community (Euratom) (hereinafter referred to as 'offsetting'). In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Commission may recover by offsetting before the due date. The Humanitarian Organisation'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 of the Treaty on the Functioning of the European Union (hereinafter referred to as 'TFEU');
  - (ii) by taking legal action in accordance with Article 30(2)(a) herein or by adopting an enforceable decision in accordance with Article 30(2)(b) herein.

## **20.2 Interest on late payment**

- a) 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 Article 18(13) herein.
- b) 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 Commission actually receives payment of the outstanding amount in full.
- c) Any partial payment shall first be appropriated against charges and interest on late payment and then against the principal.

## **20.3 Bank charges**

Bank charges incurred in connection with the recovery of the sums owed to the Commission shall be borne by the Humanitarian Organisation concerned, 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.

## **Article 21 Right of access**

The Humanitarian Organisation shall give the Commission, or any other person or organisation authorised by the Commission, access to any location where the Action is or was implemented, and to all documents and information, including information in electronic format, that are necessary to monitor the implementation of the Action, or evaluate, check or audit it pursuant to Articles 22 and 23 herein. The Humanitarian Organisation shall also allow access for on-site visits and field or headquarter audits, and any checks, inspections and verifications to be carried out by the Commission or any other person or organisation authorised by the Commission, the European Anti-Fraud Office (OLAF), or the European Court of Auditors.

## **Article 22 Evaluation of the Action**

### **22.1 Evaluation by the Humanitarian Organisation**

- a) The Humanitarian Organisation shall endeavour to conduct an evaluation on the results of the Action.
- b) When relevant, the Humanitarian Organisation shall include in the proposal presented on the Single Form any planned evaluation of the Action that is to be funded by the Union. Upon completion of the evaluation, the Humanitarian Organisation shall submit to the Commission the final evaluation report.
- c) In case of an external evaluation to be funded by the Union, the Humanitarian Organisation shall also submit to the Commission the terms of reference of the evaluation. This shall be done as soon as possible and in any case before launching the tender procedure for the external evaluation.

## **22.2 Evaluation by the Commission**

- a) The Commission or any other person or organisation authorised by the Commission may at any time conduct an evaluation of the Action. The Humanitarian Organisation shall make available to the Commission, or any other organisation or person mandated by it, all the information necessary to allow for the completion of the evaluation exercise, and shall give the required rights of access pursuant to Article 21 herein.
- b) Evaluations by the Commission are to be planned and completed between the Humanitarian Organisation and the Commission in a collaborative manner. Before an evaluation takes place, the Commission shall submit to the Humanitarian Organisation the terms of reference. Before the report is finalised, the Commission shall make a draft of its evaluation report available to the Humanitarian Organisation for comments.

## **Article 23 On-site visits, audits, checks and inspections**

### **23.1 Record keeping**

- a) The Humanitarian Organisation shall retain securely all original documents, especially accounting and tax records. It shall store them on any appropriate medium, including in a digitalised original format, where and when these are authorised by the applicable national law and under the conditions laid down therein. This obligation shall be applicable for a period of five years, starting from the date of the payment of the balance. This is without prejudice to the Humanitarian Organisation's obligation to respect the applicable national regulation on the duration of record keeping.
- b) The record keeping period specified in Article 23(1)(a) herein shall be automatically extended in case there are on-going audits on the Specific Grant Agreement, or in case of any pending appeals, litigation or pursuit of claims related to the Specific Grant Agreement. In such cases, the Humanitarian Organisation shall retain the relevant documents related to the Specific Grant Agreement until such audits, appeals, litigation or pursuit of claims are closed.
- c) The Humanitarian Organisation shall ensure that all the relevant information is available for inspection, checks and audits, and that at all times a sufficiently detailed audit trail exists to facilitate the verification of the nature, the value, and the necessity of every individual transaction and of the eligibility of costs.
- d) Upon request by the Commission, the Humanitarian Organisation shall ensure that at least a copy of the documents and information mentioned in Article 23(1)(c) herein is available at the level of the Humanitarian Organisation's headquarters. Such request shall be answered within 30 calendar days from the date of receipt of the request, unless the Parties agree in writing to extend the deadline.

### **23.2 Audits and checks by the Commission**

- a) The Commission may carry out checks and audits in relation to the use of the grant.
- b) The checks or audits shall be considered to be initiated on the date of transmission of the Commission's notice announcing them.



- c) After their notification, the checks or audits shall be planned and completed in a collaborative manner between the Humanitarian Organisation and the Commission.
- d) The Humanitarian Organisation shall take all necessary steps to facilitate the Commission's work, and it shall ensure that the information is available at the moment of the on-the-spot visit, which shall, in general, be announced between six and eight weeks in advance. The Humanitarian Organisation shall also ensure that information requested is handed over in an appropriate form. The documents requested shall be submitted upon request to the Commission or the organisation authorised by the Commission within 30 calendar days from the date of receipt of the request, unless the Parties agree in writing to extend the deadline.
- e) Information and documents provided in the framework of checks or audits shall be treated on a confidential basis.
- f) Checks or audits made by the Commission may be carried out either directly by the Commission's own staff or by any other external body expressly authorised by the Commission to do so on its behalf.
- g) Checks or audits may be initiated during the implementation of the Specific Grant Agreement and up to a period of five years starting from the date of the payment of the balance due to the Humanitarian Organisation.

### **23.3 Submission of observations and effects of audit findings**

- a) On the basis of the audit findings a draft audit report shall be prepared and sent by the Commission to the Humanitarian Organisation, in principle within 30 calendar days from the completion of the draft report.
- b) The Humanitarian Organisation shall have 30 calendar days from the date of receipt of the draft audit report to submit its observations. The final audit report shall be sent to the Humanitarian Organisation within 60 calendar days from the expiry of the time-limit for submission of observations. The Humanitarian Organisation's observations to the draft audit report shall be annexed to the final audit report.
- c) On the basis of the final audit findings, the Commission may take any measures which it considers necessary, including recovery of all or part of the payments already made by it in accordance with Article 20 herein.
- d) Where, on the basis of an audit of other grants awarded to the Humanitarian Organisation under similar conditions, the Humanitarian Organisation is found within the period referred to in Article 23(2)(g) herein, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on this grant, the Commission may take any measures it considers necessary, including recovery of all or part of the payments already made in accordance with Article 20 herein.
- e) When the final audit findings are made after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the grant, determined pursuant to Article 18(8) herein, and the total amount already disbursed to the Humanitarian Organisation under the Specific Grant Agreement.

### **23.4 Checks and inspections by OLAF**

- a) OLAF shall have the same rights of access as the Commission for the purpose of checks and investigations.
- b) OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No. 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>1</sup> and 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<sup>2</sup>, with a view to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with the Specific Grant Agreement.

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

The European Court of Auditors shall have the same rights of access as the Commission for the purpose of checks and audits.

### **Article 24 Confidential and sensitive information**

- a) The Commission and the Humanitarian Organisation shall preserve the confidentiality of any information and documents in any form that are disclosed in writing or orally in relation to the implementation of the Specific Grant Agreement and that are explicitly marked in writing as confidential or sensitive.
- b) Sensitive information includes any information the disclosure of which can jeopardize the execution of the Action or the safety or security of the beneficiaries, of the staff of the Humanitarian Organisation, Implementing Partners or the economic interests of anyone involved.
- c) The Humanitarian Organisation shall not use confidential or sensitive information and documents for any reason other than for fulfilling its obligations under the Specific Grant Agreement, unless otherwise agreed by the Parties in writing.
- d) The Commission and the Humanitarian Organisation shall be bound by the obligations referred to in Articles 24(a) and 24(b) herein during the implementation of the Specific Grant Agreement, and for a period of five years starting from the payment of the balance, unless:
- (i) the disclosing Party agrees to release the other Party from the obligation earlier;
  - (ii) the confidential or sensitive information becomes public through other means, but not in breach of the Parties' non-disclosure obligation;
  - (iii) the disclosure of the confidential or sensitive information is required by law and such disclosure is unlikely to endanger beneficiaries or humanitarian staff.

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<sup>1</sup> OJ L 248, 18.9.2013, p.1.

<sup>2</sup> OJ L 292, 15.11.1996, p.2.

e) This obligation is without prejudice to a possible transmission of confidential or sensitive information to the bodies charged with the monitoring, audit, checks and inspection tasks in application of Union law under Articles 21, 22 and 23 herein.

## **Article 25 Intellectual and industrial property rights**

### **25.1 Ownership of the results by the Humanitarian Organisation**

Unless stipulated otherwise in the Specific Grant Agreement, ownership of the results of the Action, including industrial and intellectual property rights of the reports and other documents relating to it, shall be vested in the Humanitarian Organisation.

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

The Humanitarian Organisation shall ensure that it has all the rights to use any pre-existing industrial and intellectual property rights during the implementation of the Specific Grant Agreement.

### **25.3 Rights of use of the results and of pre-existing rights by the Union**

a) The Humanitarian Organisation grants the Union the right to use the results of the Action for the following purposes:

(i) use for its own purposes, and in particular, making available to persons working for the Commission, other 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;

(ii) 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, except in case of information or documents protected pursuant to Article 24 herein;

(iii) translation;

(iv) 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, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law under Article 21, 22 and 23 herein;

(v) storage on paper, electronic or other format;

(vi) archiving in line with the document management rules applicable to the Commission;

(vii) rights to authorise or sub-licence to third parties the modes of exploitation set out in Articles 25(3)(a)(ii) and 25(3)(a)(iii) herein.

b) Additional rights of use for the Union may be provided for in the Specific Grant Agreement.

c) The Humanitarian Organisation shall warrant that the Union has the right to use any pre-existing industrial and intellectual property rights, which have been included in the results of the Action. Unless specified otherwise in the Specific Grant Agreement, 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 Action, including of the reports and other documents relating to the Action.

d) Information about the copyright owner shall be inserted when the result is divulged by the Union. The copyright information shall read: "*© – year – name of the copyright owner. All rights reserved. Licensed to the European Union under conditions.*"

## **Article 26 Processing of personal data**

### **26.1 Processing of personal data by the Commission**

a) Any personal data included in the Specific Grant Agreement, provided to the Commission during its implementation or in consequence of it, shall be processed by the Commission pursuant to Regulation (EC) No 45/2001 of the European Parliament and of 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.

b) Such data shall be processed under the responsibility of the data controller, solely for the purposes of the performance, management and follow-up of the Specific Grant Agreement, without prejudice to a possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

c) The data controller shall be the Head of Unit in charge of legal affairs of the Commission's Directorate-General for Humanitarian Aid and Civil Protection - ECHO.

d) Any other personal information, provided incidentally by the Humanitarian Organisation to the Commission or any other body charged with the monitoring or inspection tasks in application of Union law which is not needed for the opinion, audit or control shall be disregarded and not used.

e) The data subject shall have the right of access to its personal data and the right to rectify any such data. Should the data subject have any queries concerning the processing of its personal data, it shall address them to the data controller.

f) The data subject shall have the right of recourse at any time to the European Data Protection Supervisor.

### **26.2 Processing of personal data by the Humanitarian Organisation**

Where the Specific Grant Agreement requires the processing of personal data by the Humanitarian Organisation, the Humanitarian Organisation shall act under national legislation and, where applicable, Union legislation.

## **Article 27 Liability for damages**

### **27.1 Liability of the Commission**

The Commission cannot under any circumstances or for any reason whatsoever be held liable for damage or injury caused or sustained by the staff or property of the Humanitarian Organisation, or by its Implementing Partners or contractors while the Action is being carried out or as a consequence of the Action.

### **27.2 Liability of the Humanitarian Organisation**

Except in cases of *force majeure*, the Humanitarian Organisation shall compensate the Commission for any damage sustained by it as a result of the implementation of the Action, or because the Action was not implemented or was implemented poorly, partially or late.

## **Article 28 Administrative and financial penalties**

a) With due regard to the principle of proportionality, if the Humanitarian Organisation has committed substantial errors, irregularities or fraud, has made false declarations in supplying required information or has failed to supply such information for the purpose of obtaining the grant or during the implementation of the Specific Grant Agreement, or has been found otherwise in serious breach of its obligations, it shall be liable to:

(i) administrative penalties decided by the Commission pursuant to Articles 109 and 131(5) of the Financial Regulation, consisting of exclusion from all Union-funded contracts and grants for a maximum of five years from the date on which the infringement is established and confirmed following a contradictory procedure with the Humanitarian Organisation; and/or

(ii) financial penalties of 2% to 10% of the Union's contribution awarded to the Humanitarian Organisation, as fixed by the estimated budget set out in the Specific Grant Agreement.

b) In the event of another infringement within five years following the establishment of the first infringement, the period of exclusion under Article 28(a)(i) herein may be extended to 10 years and the range of the rate referred to in Article 28(a)(ii) herein may be increased to between 4% and 20%.

c) The Commission shall formally notify the Humanitarian Organisation concerned of any decision to apply such penalties.

d) The Commission is entitled to publish such decision under the conditions and within the limits specified in Article 109(3) of the Financial Regulation.

e) An action may be brought against such decision before the General Court of the European Union, pursuant to Articles 263 and 340 TFEU.

## **Article 29 Interpretation**

a) All reference made to Union legislation shall be understood as referring to the most recent applicable version of the relevant legislative text, as published in the Official Journal of the

European Union. The Commission shall inform the Humanitarian Organisation of any relevant and substantial modifications thereof.

b) Headings in these General Conditions have no legal significance and do not affect their interpretation.

### **Article 30 Applicable law and dispute settlement**

#### **30.1 Choice of law**

The Specific Grant Agreement is governed by the applicable Union law, complemented, where necessary, by the law of Belgium.

#### **30.2 Jurisdiction**

a) Pursuant to Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union shall have sole jurisdiction to hear any dispute between the Union and the Humanitarian Organisation concerning the interpretation, application or validity of the Specific Grant Agreement, provided such dispute cannot be settled amicably.

b) By virtue of Article 299 TFEU, for the purposes of recoveries within the meaning of Articles 20 herein or financial penalties within the meaning of Article 28 herein, the Commission may adopt an enforceable decision to impose pecuniary obligations on any person other than States. An action may be brought against such a decision before the General Court of the European Union, pursuant to Article 263 TFEU.