

**GENERAL CONDITIONS**  
**APPLICABLE TO HUMANITARIAN AID ACTIONS FINANCED BY THE**  
**EUROPEAN UNION UNDER AN INDIRECT MANAGEMENT DELEGATION**  
**AGREEMENT**

**Article 1: Definitions and Interpretation**

Action:	the program or project partly or wholly financed by the EU, which may be carried out by the ICRC itself and/or the Sub-delegatees, as described in the Single Form.
Budget Implementation Tasks	tasks consisting of carrying out procurement and grant award procedures, and awarding, signing and executing the resulting procurement contracts and grant agreements, notably accepting deliverables, carrying out payments and recovering the funds unduly paid, where works, services, supplies and other benefits are not for the own use of the ICRC. The ICRC cannot further delegate these Budget Implementation Tasks and remains solely and wholly responsible for their execution.
Central Exclusion Database:	database of all legal and natural persons excluded from EU funding set up by Commission Regulation (EC, Euratom) No. 1302/2008, of 17 December 2008, on the central exclusion database (OJ L 344/12, 20.12.2008).
Contractor:	a natural or legal person with whom a procurement contract has been signed.
Economy:	the principle of economy requires that resources used in the pursuit of the implementation of the Action shall be made available in due time, in appropriate quantity and quality and at the best price.
Effectiveness:	the principle of effectiveness concerns the attainment of the specific objectives and the achievement of the intended results.
Efficiency:	the principle of efficiency concerns the best relationship between resources employed and results achieved.
Equipment:	durable items that can be used multiple times over their estimated economic useful lifespan. They comprise both support equipment, intended to assist the implementation of the Action, and operational equipment, intended for the direct benefit of the Final Beneficiaries.
Implementing Partner:	a natural or legal person to whom a grant has been awarded by the ICRC. Implementing Partners can sub-grant and procure for the implementation of their activities.
Final Beneficiaries:	natural or legal persons ultimately benefitting from the Action.
Force Majeure:	any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of its obligations under the Agreement, which may not be attributed to error or negligence on either part (or the part of the Sub-delegatees, Implementing Partners, contractors, agents or staff), and which could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as force majeure by the defaulting Party.
Goods:	refer to items intended for direct consumption or use by the Final Beneficiaries.
Humanitarian aid Principles:	the principles of humanity, impartiality, neutrality and independence.

Internal Control:	a process applicable at all levels of management designed to provide reasonable assurance of achieving the following objectives: (a) effectiveness, efficiency and economy of operations; (b) reliability of reporting; (c) safeguarding of assets and information; (d) prevention, detection, correction and follow-up of fraud and irregularities; (e) adequate management of the risks relating to the legality and regularity of the financial operations, taking into account the multiannual character of programmes as well as the nature of the payments concerned.
Substantial Error or Irregularity:	infringement of a provision of an agreement resulting from an act or an omission which causes or might cause a loss to the EU contribution.
Sound Financial Management:	principle overarching the implementation of this Agreement, namely economy, effectiveness and efficiency.

## Article 2: General obligations

### Implementation of the Action

- 2.1 The ICRC 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 Agreement. The ICRC shall take every precaution to ensure, in line with its respective regulations, rules and procedures, and with due care of applicable privileges and immunities that all the staff and the supplies used for the implementation of the Action are adequately protected from any form of harm and damage.
- 2.2 The ICRC undertakes to do everything in its powers to mobilise all the financial, human and material resources required for the full implementation of the Action, as specified in the Single Form referred to in Article 3.1. The ICRC shall perform the activities assigned to it under the Agreement in accordance with the principle of sound financial management, transparency and non-discrimination.
- 2.3 The Action shall be implemented in line with the provisions set out in this Agreement, and 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 implementation period established in Article 2.2 of the Special Conditions.
- 2.4
- a) The Action covered by the Agreement may be a Multi-donor Action, where EU funds are pooled with funds contributed by at least one other donor. The ICRC itself can be the other donor.
  - b) Where the Action relates to a project or programme which is eligible in its entirety for EU humanitarian funding, all results of the latter may be mentioned in the Single Form (logic of intervention) and, if so, shall be reported on.
  - c) When the Action relates to a project or programme which is not eligible in its entirety for EU humanitarian funding, the Single Form (logic of intervention) shall identify the specific operational results that the Commission is willing to support through EU humanitarian funding.
  - d) The Commission shall contribute to the Multi-donor Action concerned up to the amount specified in the Agreement upon achievement of those operational results identified in the Single Form (logic of intervention), provided that the conditions laid down in Article 21.2 are complied with.
  - e) The ICRC shall endeavour to ensure that contributions from other donors (including the ICRC itself) are sufficient to achieve the results identified in the Single Form.

f) The extent to which an Action is wholly or partially eligible for EU humanitarian aid funding shall be determined by the Commission, in consultation with the ICRC, on the basis of:

- i) its compliance with the EU humanitarian mandate, as framed in particular by Article 214 of the Treaty on the Functioning of the European Union and Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid<sup>1</sup>;
- ii) its relevance to the EU operational strategy and priorities set out for the given crisis, and
- iii) its coherence with relevant EU humanitarian policies, as framed in particular by the European Consensus on Humanitarian Aid<sup>2</sup> and any relevant Commission's sectoral and thematic standards and guidelines.

- 2.5 The conclusion of the Agreement is based on the understanding that the Action has been retained for financing having due regard to quality standards and the existing European Union policy approach in support of humanitarian actions, including the Commission's sectoral and thematic standards and guidelines, whilst taking into account the specific operating environment.
- 2.6 The ICRC shall implement the Action in compliance with the humanitarian aid principles and the highest ethical standards.
- 2.7 The ICRC shall ensure that sensitive items, such as food and medical supplies, are procured in accordance with internationally recognised quality standards.
- 2.8 The Action shall be culturally appropriate and adequate for the specific needs of different groups of affected persons (notably women, girls, boys, men and older persons) and shall uphold the 'do no harm' principle. Priority shall be given to the analysis of the Final Beneficiaries' situation given the circumstances and context of intervention, including assessments of the different needs, capacities, and roles that might exist for men and women of different age groups within the given situation and cultural context.
- 2.9 Both Parties will endeavour to strengthen their mutual contacts with a view to improving the exchange of information throughout the implementation of the Action. To this end, the ICRC and the Commission shall participate in coordination meetings and other jointly organised common activities and the ICRC shall invite the Commission to join any donor committee which may be set up in connection with Multi-donor Actions.
- 2.10 In the performance of the activities, the ICRC shall apply its own accounting system, which shall provide timely, accurate, complete and reliable information; ensure the functioning of an effective and efficient Internal Control System and be subject to an independent audit performed in accordance with internationally accepted auditing standards by a functionally independent audit service.
- 2.11 In case the ICRC, in accordance with Article 1.4 of the Special Conditions, uses its own rules for grant and/or procurement procedures, the ICRC shall ensure that transparent, non-discriminatory, efficient and effective review procedures are in place.

## **Responsibility**

### 2.12 Responsibility of the ICRC

- a) The ICRC shall remain fully responsible towards the Commission for the implementation of the Action and for ensuring compliance with the provisions of the Agreement, regardless whether the activities are carried out by the ICRC itself or a Sub-delegatee, a Contractor or an Implementing Partner.

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<sup>1</sup> OJ L 163, 2.7.1996, p. 1.

<sup>2</sup> Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission (OJ C 25, 30.1.2008, p. 1)

- b) The ICRC, in accordance with its rules and regulations, shall take all necessary measures to resolve problems encountered in proportion to their seriousness, including the suspension of the agreements with Sub-delegatees and the suspension of payments. Where the situation so requires, the ICRC shall terminate the agreements with Sub-delegatees and/or the contracts with Contractors and Implementing Partners.
- c) The ICRC shall, in accordance with its rules and regulations, take measures to prevent, detect and correct irregularities and fraud when executing the activities. To this end, the ICRC shall carry out, in accordance with the principle of proportionality, ex ante and ex post controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the actions financed by the EU are effectively carried out and implemented correctly.
- d) The ICRC shall have full financial responsibility towards the Commission for all funds unduly paid to Sub-delegatees, Contractors and Implementing Partners. The ICRC shall take all necessary measures to recover funds unduly paid or incorrectly used, including bringing legal proceedings against Sub-delegatees, Contractors and Implementing Partners. The Commission will be entitled to recover funds:
  - (i) from the ICRC in accordance with the provisions on recovery in Article 22.
  - (ii) from the Sub-delegatees when the ICRC could not recover itself from the Sub-delegatees and the ICRC has included in the agreements with Sub-delegatees the right of the Commission to proceed itself to the recovery by any means if the Sub-delegatee does not reimburse the ICRC.

### **Sub-delegation**

- 2.13 The ICRC may delegate activities to one or more Sub-delegatees, as described in the Single form. When the Sub-delegatees are not listed in Article 1.6 of the Special Conditions, the ICRC shall ask prior written approval of the Commission once they are identified.
- 2.14 The Sub-delegatee may not further sub-delegate the activities delegated to it by the ICRC.
- 2.15 Sub-delegation of activities is only possible where the following conditions are met:
  - a) the Sub-delegatee is an International Organisation or one of its agencies or a local authority;
  - b) the Sub-delegatee has been positively assessed ex ante by the Commission to work in indirect management, or it has been positively assessed ex-ante by the Organisation which carried out a pillars assessment equivalent to the one performed by the Commission on the ICRC. Where deficiencies have been found, if approved in the ex-ante assessment of the Organisation by the Commission, the Organisation shall submit the Sub-delegatee to increased scrutiny either by ex-ante approval, ex-post checks or a combination of remedial measures;
  - c) the ICRC ensures that the necessary ex-post controls are in place in order to guarantee the sound financial management of the EU contribution;
  - d) the ICRC entrusts to the Sub-delegatee a part of the Action described in the Single Form, including Budget Implementation Tasks.
- 2.16 The ICRC shall ensure that (i) Sub-delegatees carry out the activities entrusted to them for the implementation of the Action and (ii) the costs incurred by the Sub-delegatees are eligible in accordance with Article 19. The ICRC shall conduct regular checks to ensure that the Action is implemented correctly by the Sub-delegatees.
- 2.17 The ICRC shall ensure that the provisions laid down in Articles: 2.2, 2.10, 2.11, 2.12.b, 2.12.c, 2.18 and 2.19-General obligations, 5-Reporting, 6-Liability, 7-Conflict of interest, 8-Confidentiality, 9-Data protection, 10-Communication and Visibility, 11-Ex-post publication of Contractors and Grant Beneficiaries, 12-Ownership, right to use and transfer of results and equipment, 13-Evaluation and monitoring of the Action, 15-Contracting and Central Exclusion Database and 23-Accounts, technical and financial checks apply mutatis mutandis to Sub-delegatees.

### **Other obligations**

- 2.18 The ICRC shall ensure that the obligations stated in this Agreement under Article 9-Data protection applies to all Contractors and that Articles 7-Conflict of interest, 8-Confidentiality, 10-Communication

and visibility, 12-Ownership and right to use of results and Cost related to equipment and remaining goods, as well as 23-Accounts, technical and financial checks apply, where applicable, to all Contractors and Implementing Partners.

- 2.19 The ICRC shall notify the Commission without delay of any substantial change in the rules, procedures and systems applied in the implementation of the Action. This obligation concerns in particular (i) changes affecting the pillars assessment undergone by the ICRC, (ii) those which may affect the conditions for eligibility provided for in the applicable legal instruments of the EU, or (iii) any other circumstance likely to affect the implementation of the Action, such as use of remote management, or delay or jeopardise the performance of the activities. The Commission reserves the right to adopt additional measures in response to said changes or to terminate the Agreement pursuant to the provisions of Article 17 hereafter.

### **Article 3: Conclusion and entry into force of the Agreement**

- 3.1 The ICRC shall present the Action proposal on the Single Form made available via the electronic exchange system referred in Article 4. The Commission shall draft the Agreement according to the agreed standard format and in conformity with the Action proposal agreed by the Parties.
- 3.2 Irrespective of the start date of the Action laid down in Article 2.2 of the Special Conditions of the Agreement:
- a) where the Agreement is sent by the Commission to the ICRC 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 by the ICRC;
  - b) where the Agreement 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 by the ICRC, through the electronic exchange system referred to in Article 4.
- 3.3 The authorised representative of the ICRC shall sign the Agreement and shall transmit it to the Commission within 15 calendar days following its receipt. When justified, the Commission may consider that the signed Agreement is valid although it was transmitted after this deadline.
- 3.4 Under no circumstances whatsoever may the ICRC make changes to the Agreement sent for signature.

### **Article 4: Transmission of documents**

- 4.1 Without prejudice to Article 3 herein, communication relating to the Agreement, shall be made in writing via the electronic exchange system developed by the Commission and to which the ICRC has been granted access via an appropriate authentication system. Access to the electronic exchange system is subject to a unique username and password, and documents submitted via this medium shall be considered equivalent to signed documents. It is the responsibility of the ICRC to ensure the accuracy of the information supplied, to manage its own user rights and to take the necessary measures to avoid unauthorized access or use.
- 4.2 By way of exception from Article 4.1, where access to the electronic exchange system is not technically possible, communication relating to the Agreement may be made either electronically by e-mail or by postal delivery, mentioning the number of the Agreement.
- a) when such communication is made by the Commission through e-mail, it shall be sent to the e-mail address of the ICRC identified in the Single Form. Communication by postal delivery shall be sent to the postal address of the ICRC supplied through the electronic exchange system.
  - b) when such communication is made by the ICRC by e-mail, it shall be sent to contact persons in the Commission responsible for the Agreement. When such communication is made by the ICRC by postal delivery, it shall be sent to the postal address of the Commission: European Commission, Directorate-General for Humanitarian Aid and Civil Protection – ECHO, B-1049 Brussels, Belgium.

- 4.3 In situations referred to in Article 4.2, and where the Agreement requires that a Party formally notifies the other Party, the communication shall be made by registered postal delivery with return receipt or equivalent electronic means provided they allow a certification of reception.
- 4.4 In situations referred to in Article 4.2, 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.
- 4.5 Communication made in the electronic exchange system is deemed to have been received by the receiving Party on the day of its successful submission. When communication is made through e-mail or postal delivery pursuant to Article 4.2, 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 4.2. 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.
- 4.6 Any exchange of documents between the Parties relating to the Agreement shall be drafted in the language in which the Agreement was established.

## **Article 5: Obligations regarding information and reporting**

### **Obligations regarding information**

- 5.1 The Commission may request specific information related to the implementation of the Action at any time providing reasons for that request. The ICRC shall submit the reasonably available information as soon as possible, and at the latest within 30 calendar days following the receipt of the request.

### **Purpose and scope of reporting**

- 5.2 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 Agreement and to determine which costs are eligible for EU funding. Every report shall relate to the whole of the Action, as defined in Article 1 of the Special Conditions, regardless whether the Action is fully or partially funded by the EU Contribution. It shall ensure comparability with the original proposal, while taking into account of any modifications of the Action, as well as the internal reporting and accounting systems of the ICRC. Where so permitted by the ICRC's policy on disclosure, the report should include a summary of any controls carried out and available final audit reports. Where errors and weaknesses were identified, analysis of their nature and extend as well as information on corrective measures should also be provided.
- 5.3 In case of Multi-donor Actions where the project or programme of the ICRC lasts longer than the implementation period of this Agreement, the Commission may request the final reports of the project or programme once available. This is without prejudice to this Agreement's closure as set out in Article 17.12.

### **Interim Report**

- 5.4 Where so specified in the Agreement, the ICRC shall submit an Interim Report providing an account of the implementation of the Action for the period covered. The Interim Report shall be made on the standard format provided in the Single Form, and present the status of implementation of the Action.

### **Final Report**

- 5.5 The ICRC shall submit a Final Report on both the implementation of the Action ("Narrative Report") and the use of the estimated budget ("Financial Report"). The Final Report shall be presented on the Single Form, including any annexes attached thereto.
- 5.6 Without prejudice to Article 20.3, any report shall be deemed approved, if the Commission has not reacted within 45 calendar days after its receipt. Without prejudice to Article 16.5, if the Commission does not intend to approve a report as submitted, it shall revert to the ICRC within 45-calendar days from

the receipt of the report explaining the reason and specifying the additional information it requires. The deadline for approving the report shall be suspended pending the receipt of the requested information.

a) Narrative Report

The Narrative Report shall be made on the format of the Single Form and shall provide an overview of the implementation of the Action during the implementation period set out in Article 2.2 of the Special Conditions. The Narrative Report shall in particular assess the level of achievement of the objective and results envisaged in the proposal, while taking account of any modifications of the Action presented on the Single Form. Where applicable, it shall also include an overview of the control measures carried out on Sub-delegatees and in case weaknesses are detected, information on their nature and extent as well as corrective measures adopted.

b) Financial Report

The Financial Report shall provide a clear identification of all expenses actually incurred as well as of the contributions received and revenue of the Action, as applicable. 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 consistent with the budget of the Action.;
- iii) where applicable, an overview of any funds unduly paid or incorrectly used which the ICRC could or could not recover itself;
- iv) the exact link to the webpage where, according to Article 11.2, information on Contractors and Implementing Partners is available;
- v) to the extent possible, the costs of funding Budget Implementation Tasks and
- vi) when the Action is fully funded by the EU, information annexed to the Single Form on remaining goods and equipment, including low value equipment referred to in Article 12.4.d.iv or goods referred to in Article 12.6.a.

### **Management declaration and audit or control opinion**

- 5.7 Every report shall be accompanied by a management declaration in accordance with the template Annex III to the Framework Partnership Agreement;
- 5.8 The ICRC shall provide the Commission, within six months from submitting the Final Report, with an opinion by an independent audit body in accordance with Article 5.9 or an opinion by the internal audit or control body of the ICRC.
- 5.9 The opinion referred to in Article 5.8 shall be drawn up in accordance with internationally accepted audit standards, establishing whether the accounts give a true and fair view, whether the control systems in place function properly, and whether the underlying transactions are legal and regular. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration mentioned above.

### **Exchange rate**

- 5.10 The reports shall be submitted in Euro. When the ICRC's accounting requirements impose the use of another currency, reports will be submitted both in Euro and in the holding currency used by the ICRC. For the purpose of reporting, conversion into Euro shall be made using one of the options listed below and specified in Article 6.4 of the Special Conditions:
  - a) the rate applied by the European Central Bank as published in the Official Journal in force on the day on which the EU contribution was recorded in the accounts of the ICRC<sup>3</sup>;
  - b) the ICRC's exchange rate, according to its accounting principle, on the day on which the EU contribution was recorded in the accounts of the ICRC.

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<sup>3</sup> Available at: <http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html>

## **Article 6: Liability**

- 6.1 The Commission shall not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the ICRC while the Action is being carried out or as a consequence of the Action. The Commission shall not therefore accept any claim for compensation or increases in payment in connection with such damage or injury.
- 6.2 Subject to the rules governing the ICRC's privileges and immunities, if applicable, the ICRC shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the implementation of the Action.
- 6.3 The ICRC shall discharge the Commission of all liability associated with any claim or action brought as a result of an infringement of the ICRC's rules and regulations committed by the ICRC or ICRC's employees or individuals for whom those employees are responsible, or as a result of violation of a third party's rights.

## **Article 7: Conflict of interest**

- 7.1 The ICRC shall refrain from any action which may give rise to a conflict of interest.
- 7.2 There is a conflict of interest where the impartial and objective exercise of the functions of any person implementing the Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another party, such as a Contractor or Implementing Partner.

## **Article 8: Confidentiality**

- 8.1 (a) The Commission and the ICRC shall preserve the confidentiality of any document, information or other material directly related to the implementation of the Action that is confidential.
- (b) Subject to Article 23, the Commission may have access upon request, on a confidential basis, to such documents, information or other material. The confidential nature of a document shall not prevent from it being communicated on a confidential basis when the rules binding upon the Parties so require.
- 8.2 The Parties shall obtain each other's prior written consent before publicly disclosing such information unless:
- a) the concerned Party agrees to release the other Party from the confidentiality obligations earlier;
  - b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;
  - c) the disclosure of confidential information is required by law or by regulations and rules established in accordance with the basic constitutive document of the ICRC. The Party disclosing confidential information undertakes to inform the other Party of the obligatory disclosure and the context in which it occurred. In no case can disclosure put into jeopardy the Organisation's privileges and immunities or the safety and security of the Organisation's staff.
- 8.3 The Parties shall remain bound by confidentiality for at least five years after the End Date of the Agreement.

## **Article 9: Data Protection**

- 9.1 The ICRC shall ensure a reasonable protection of personal data. Personal data means any information related to a natural person. Any operation performed upon personal data, such as collection, recording, organisation, storage, adaption or alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on the rules and procedures of the ICRC and shall only be done as far as it is necessary for the performance of the mandate of the ICRC.

- 9.2 In particular, the ICRC shall take appropriate technical and organisational security measures concerning the risks inherent in any such operation and the nature of the information relating to the natural person concerned, in order to:
- a) Prevent any unauthorised person from gaining access to computer systems performing such operations, and especially unauthorised reading, copying, alteration or removal of storage media; this includes unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored information;
  - b) Ensure that authorised users of an IT system performing such operations can access only the information to which their access right refers;
  - c) Design its organisational structure in such a way that it meets the above requirements.

## **Article 10: Communication and visibility**

- 10.1 With a view to ensure the necessary visibility in the field the ICRC agrees to implement the following activities:
- a) as a general principle, the ICRC will guarantee equal treatment among donors, offering the Commission the same visibility offered to other donors;
  - b) where the European Union contribution has been used to purchase major food supplies to be distributed to the Final Beneficiaries, the ICRC agrees to include acknowledgment of the European Union's contribution on these food supplies by the display of the European Union emblem.
- 10.2 The obligations laid down in Article 10.1.b are applicable provided that the display of the European Union emblem does not jeopardize the ICRC's humanitarian access, the safety and security of the ICRC's staff or undermine the perception of the ICRC's neutrality, independence and impartiality. If, in the ICRC's view, the safety and security of its staff is jeopardized, the ICRC may submit a duly justified request for derogation to the above visibility obligations. If the Commission accepts the request, the derogation shall be granted and confirmed in Article 6.2 of the Special Conditions.
- 10.3 The ICRC accepts that the Commission publishes in any form and medium, including on its websites the name and address of the ICRC, the purpose and amount of the European Union contribution. The Commission may forego such publicity if disclosure of the above information would risk threatening the ICRCs', Implementing Partners', Contractors' or Final Beneficiaries' safety or harming ICRC's interests.
- 10.4 Visibility in the European Union shall be ensured pursuant to Article 8 of the Framework Partnership Agreement.

## **Article 11: Ex-post publication of information on Contractors and Implementing Partners**

- 11.1 The ICRC shall publish, on an annual basis, on its internet site, the following information on procurement contracts exceeding EUR 15 000 and all grants financed by the EU: title of the contract/project, nature and purpose of the contract/project, name and locality of the Contractor or Implementing Partner, and amount of the contract/project. The term "locality" shall mean the address for legal persons and the Region on NUTS<sup>4</sup> 2 level, or equivalent, for natural persons. This information shall not be published for scholarships paid to natural persons and other direct support paid to natural persons in most need. This information shall be published with due observance of the requirements of confidentiality and security.
- 11.2 The ICRC shall provide to the Commission the address of the internet site where this information can be found and shall authorise the publication of such address on the Commission's internet site.
- 11.3 Where the Action is a Multi-Donor Action, the publication of information on procurement to Contractors and grants to Implementing Partners shall follow the rules of the ICRC with due observance of the requirements of proportionality, confidentiality and security.

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<sup>4</sup>Nomenclature of Territorial Units for Statistics, available at: <http://ec.europa.eu/eurostat/ramon>.

## **Article 12: Ownership and right to use of results. Cost related to equipment and remaining goods**

### **Ownership**

12.1 Unless stipulated otherwise in the Special Conditions, ownership of the results of the Action, including industrial and intellectual property rights on the outputs of the Action, the reports referred to in Article 5 herein and other documents relating to the Action shall be vested in the ICRC and, as the case may be, in third parties.

### **Right to use**

12.2 Without prejudice to Article 12.1, the ICRC shall grant, and shall act to ensure that the third party concerned (Sub-delegatee, Implementing Partner or Contractor) grants the Commission the right to use freely and as it sees fit all documents produced as a result of the Action, whatever their form or medium, provided that such use does not violate existing industrial and intellectual property rights.

### **Costs related to equipment**

12.3 When the equipment is purchased within the framework of a multi-donor Action, the ICRC is exempted from the provisions set out in Article 12.4, provided that the equipment is used to the benefit of humanitarian actions.

12.4 Where the equipment is not purchased within the framework of a multi-donor Action, new or second-hand equipment used for the Action may be charged under the following options:

- a) Depreciation costs are eligible, provided that the equipment is written off in accordance with the usual accounting practices of the ICRC and only the portion of the equipment's depreciation costs corresponding to the duration of the Action and the rate of actual use for the purposes of the Action are 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 these costs are exclusive of any finance fee and 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.
- d) The full purchase price of equipment may be eligible, subject to the following options:
  - i) The ICRC transfers the equipment to another EU-funded humanitarian aid Action. The ICRC shall, in such cases, 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 pursuant to the usual accounting practices of the ICRC, the obligation to either transfer to another EU-funded humanitarian aid Action of the ICRC or to donate pursuant to Article 12.4.d.ii shall apply until the end of the equipment's useful economic lifespan.
  - ii) If transfer to another EU-funded humanitarian aid Action of the ICRC is not possible or appropriate, the equipment may be donated to the Final Beneficiaries of the Action, or to local non-profit organisations, local authorities identified as Implementing Partners or to local Sub-delegatees. For duly justified reasons, remaining equipment may also be donated to local non-profit organisations or to local authorities other than Final Beneficiaries, as well as to International Organisations or international non-governmental organisations. In such a case, the ICRC shall obtain prior agreement of the Commission pursuant to Article 14.3. Under no circumstances may the equipment be donated to for-profit entities. In all cases, the ICRC shall submit with the Final Report information on the equipment's destination and shall retain documentary proof, namely a donation certificate.
  - iii) Any equipment, the cost of which does not exceed EUR 750 per item, shall be exempt from the obligation of transfer or donation. The ICRC pledges to use the retained equipment for the benefit of humanitarian actions.

iv) 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, 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 5.6.b.vii. The ICRC pledges to use the retained equipment for the benefit of humanitarian actions.

e) The Commission may, pursuant to Article 14.3, agree to a derogation from the obligation to transfer to another EU-funded humanitarian aid Action of the ICRC 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 ICRC pledges to use the retained equipment for the benefit of humanitarian actions until the end of its useful economic lifespan.

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

12.5 When the goods are purchased within the framework of a Multi-donor Action, the ICRC is exempted from the provisions set out in Articles 12.6 provided that the goods are used to the benefit of humanitarian actions.

12.6 Where the goods are not purchased within the framework of a multi-donor Action, remaining goods not distributed to Final 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 eligible subject to the following options:

a) Remaining goods may be transferred to another EU-funded humanitarian aid Action of the ICRC, provided that their destination is indicated in the Final Report. All goods shall either be used or donated pursuant to Article 12.6.b at the end of the Action to which they were transferred.

b) If transfer to another EU -funded humanitarian aid is not possible or appropriate, the remaining goods may be donated to local communities, or to non-profit organisations, local authorities identified as Implementing Partners or to local Sub-delegatees. 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 ICRC shall obtain prior agreement of the Commission pursuant to 14.3. Under no circumstances may the remaining goods be donated to for-profit entities. In all cases, the ICRC 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) 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 ICRC pledges to use these to the benefit of humanitarian actions.

12.7 The Commission may, pursuant to Article 14.3, agree to a derogation from the obligation to transfer to another EU-funded humanitarian aid Action of the ICRC or from the obligation to donate, in particular where the nature of the goods requires expert handling (e.g. nutrition or health-related goods). The ICRC pledges to use the retained goods for the benefit of humanitarian actions.

### **Article 13: Evaluation and monitoring of the Action**

13.1 To facilitate coordination between the ICRC and the Commission, the ICRC's submissions of proposals shall where applicable outline the proposed evaluation plan of the relevant Action. Commission representatives shall be invited to participate in the main evaluation missions funded by the Commission and relating to the performance of the Action. The results of such missions shall be reported to the Commission.

13.2 The Commission may organise visits to project locations and offices in the context of its own evaluation of the Action, and as part of its regular monitoring. The staff of the ICRC and of the Commission's shall collaborate as far as possible in organising such visits, keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement.

13.3 The Commission shall offer to make a draft of its evaluation report available to the ICRC for comments prior to finalisation

## **Article 14: Amendment to the Agreement**

### **Scope and form of the amendments**

- 14.1 Any amendment of the Agreement shall be done in writing. Amendments shall not have the purpose or effect of making changes to the Agreement which would call into question the award of the Agreement.
- 14.2 The Agreement may be amended only until the end date established in accordance with the Article 17.3.

### **Amendment by mutual consent**

- 14.3 When the amendment request affects Articles 1, 2, 3.2, 3.3, 4, 5 or 6 of the Special Conditions or the title, principal and specific objective, results, indicators related to the specific objective and results, number and type of Final Beneficiaries, or the country and/or region of implementation, the Party requesting the amendment shall send to the other Party a duly justified amendment request.
- 14.4 The amendment request shall be made in due time and in any case 30 calendar days before the end date of the Action set out in the Special Conditions, unless the Parties agree to a shorter time limit. In exceptional cases, the ICRC may request an amendment after the end of the implementation period of the Action, and at the latest with the Final Report.
- 14.5 The Party being requested an amendment commits to inform in writing the other Party of its acceptance or rejection of the proposed amendment, as soon as possible, and in any case no later than 30 calendar days from receipt of the request. If the request for amendment was made by the ICRC after the end of the implementation period or with the Final Report, the Commission shall notify of its decision on the proposed amendment with the notification of final payment pursuant to Article 21.
- 14.6 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.
- 14.7 The Party requesting the amendment shall abstain from implementing any changes before having received the express agreement of the other Party, except in case of force majeure, suspension of the implementation of the Action or equivalent circumstances which require the immediate adoption of precautionary measures.

### **Clerical errors**

- 14.8 Clerical errors are unintentional additions, omissions or typographical errors made in the text of the Agreement. In the case of a clerical error in the text of the Agreement, the Parties shall inform each other as soon as the error is identified and the text shall be rectified by mutual consent. The clerical error shall be without prejudice to the validity of the Agreement.

### **Budget transfers**

- 14.9 Provided that the Action is implemented as described in the Single Form, the ICRC is allowed to 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 Agreement within the meaning of Article 14.3.

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

- 14.10 In case of changes that affect other elements than those specified in Article 14.3 the ICRC shall inform the Commission in accordance with Article 4.

## **Article 15: Contracting, Grant Award and Central Exclusion Database**

### **Contracting and Grant Award**

- 15.1 Procedures to award contracts or grants may have been initiated and may be signed by the ICRC before the start of the Implementation Period.
- 15.2 The ICRC shall adopt reasonable measures, in accordance with its own rules and procedures, to ensure that potential candidates or tenderers and applicants, shall be excluded from the participation in a

procurement or grant or other award procedure and from the award of a procurement or other contract or grant financed by EU funds, if these persons:

- a) are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgement of a competent authority which has the force of res judicata;
- c) or persons having powers of representation, decision making or control over them have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the EU's financial interests;
- d) are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or if they fail to supply this information;
- e) are subject to a conflict of interests.

### Central Exclusion Database

- 15.3 Without prejudice to Article 18.2, the ICRC undertakes to inform the Commission if it has found that a third party is in one of the situations referred to in Article 15.2.c. The information shall be transmitted using the ad-hoc template<sup>5</sup>, which shall be sent to the Commission with an indication of the duration of the exclusion, decided on the basis of the judgement which is being notified. Copy of the definitive judgement and where available and applicable of the necessary documents establishing the legal existence of the entity concerned shall also be provided. The Commission shall introduce this information in the Central Exclusion Database. The ICRC shall inform whenever information transmitted needs to be rectified, updated or removed. The ICRC shall ensure that the entity concerned is informed that its data was transmitted to the Commission and may be included in the Central Exclusion Database.
- 15.4 Without prejudice to the power of the Commission to exclude an entity from future contracts and grants financed by the EU, the ICRC may impose financial penalties to Contractors and Implementing Partners according to its own rules and procedures ensuring the right of defence of the Contractor or Implementing Partner.
- 15.5 The ICRC may take into account, as appropriate and on its own responsibility the information contained in the Central Exclusion Database, when awarding contracts or grant agreements. Access to the information can be provided through the unit in charge of finance, legal affairs and partner support of the Commission's Directorate-General for Humanitarian Aid and Civil Protection - ECHO<sup>6</sup> when the ICRC applies the adequate data protection measures as provided in the 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 (OJ L 8, 12.1.2001, p. 1).
- 15.6 In the event of failure to comply with Article 15.3, the Commission may declare the related costs ineligible for funding by the EU.

<sup>5</sup> <http://ec.europa.eu/europeaid/companion/annexes.do?annexId=92>

<sup>6</sup> The International Organisation shall be allowed to have direct access to the Central exclusion database through a liaison point when the International Organisation certifies to the Commission service responsible that it applies the adequate data protection measures as provided in the 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 (OJ L 8, 12.1.2001, p. 1).

## **Article 16: Suspension**

### **Suspension of payments and suspension of the time limit of a single payment request**

- 16.1 The Commission may suspend payment, fully or partly, if:
- a) The Commission, on the basis of information it received, has serious concerns and needs to verify whether:
    - i) substantial errors, irregularities, fraud or breach of obligations committed by the ICRC or the Sub-delegatees in the procedure of their selection, on their pillars assessment or in the implementation of the Action, including regarding the Communication and Visibility obligations, have occurred;
    - ii) there are significant deficiencies in the functioning of the ICRC's or the Sub-delegatees' Internal Control system or systemic errors are detected which call into question the reliability of the ICRC's or the Sub-delegatees' Internal Control system or the legality and regularity of the underlying transactions;
  - b) The suspension is necessary to prevent significant damage to the EU financial interests;
  - c) The Commission has evidence that the ICRC or the Sub-delegatees have committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other agreements funded by EU funds provided that those errors, Irregularities, fraud or breach of obligations have a material impact on this Agreement;
- 16.2 In the situations listed in Article 16.1 the Commission shall immediately inform the ICRC about the suspension of payments and the reasons thereof. The ICRC shall provide its observations within 30 calendar days. The Commission shall, as soon as possible and at the latest within 30 calendar days from the receipt of the observations, formally notify its conclusions and without prejudice to the termination of the Agreement according to Article 17.3, resume payments or recover amounts unduly paid in line with Article 22 or, in duly justified circumstances, confirm the suspension for a maximum period of 30 additional calendar days.
- 16.3 In the situations listed in Article 17.3, the Commission may suspend payments as a precautionary measure informing the ICRC immediately in writing. The procedure described in Article 17.6 shall apply.
- 16.4 The Commission may suspend the time limit of payment of a single payment request by notifying the ICRC that either:
- a) The amount is not due;
  - b) The appropriate supporting documents have not been provided;
  - c) The information that comes to the notice of the Commission puts in doubt the eligibility of the expenditure included in a payment request.
- 16.5 In the situations listed in Article 16.4 the Commission shall notify to the ICRC as soon as possible the reasons for the suspension, specifying the additional information required. Suspension shall take effect on the date when the Commission sends the notification stating the reasons for the suspension. The remaining payment period shall start to run again from the date on which the Commission notifies that the requested information or revised documents are received or the necessary further checks are carried out.

### **Suspension of the implementation of the Action by the ICRC**

- 16.6 The ICRC 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, constitute a serious threat to the safety and security of humanitarian workers or Final Beneficiaries, or the inability to ensure compliance with humanitarian principles.
- 16.7 The ICRC shall inform the Commission of the suspension without delay, namely as soon as the circumstances so allow, giving all the necessary details and the foreseeable date of resumption.
- 16.8 The ICRC shall endeavour to minimise the time of the suspension and any possible damage. The ICRC shall resume implementation once circumstances allow, informing the Commission accordingly.

- 16.9 The ICRC shall also inform the Commission of the details of the expenses connected to the suspended activities which are expected to be incurred during the suspension period.

#### **Suspension of funding of the Action by the Commission**

- 16.10 The Commission may discontinue funding to the ICRC in relation to implementation of the Action or any part thereof:
- a) if the Commission has evidence that the ICRC committed substantial errors, irregularities or fraud in the implementation of the Agreement or if the ICRC fails to comply with its obligations under the Agreement;
  - b) if the Commission has evidence that the ICRC committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other actions funded by the EU which were awarded to the ICRC under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this Action;
  - c) if the Commission suspects substantial errors, irregularities, fraud or breach of obligations committed by the ICRC in the implementation of the Agreement and needs to verify whether they have actually occurred;
  - d) if the Commission considers that exceptional circumstances, including force majeure, make such implementation excessively difficult or dangerous for the humanitarian workers and Final Beneficiaries;
  - e) if the Commission considers that there is an incompatibility between the further implementation of the Action and compliance with humanitarian principles.
- 16.11 The Commission shall notify the ICRC of its intention to suspend funding, specifying the reasons thereof, and, where applicable, the necessary conditions for resuming funding. The ICRC 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. If the ICRC fails to raise any observations within this time-limit, the suspension of funding shall take effect on the expiry of this time-limit. If the ICRC raises observations, after examination of those observations, the Commission shall notify the ICRC of its decision on the suspension. If the Commission decides to suspend the Agreement, the suspension shall take effect on the date of receipt of this notification by the ICRC.

#### **Duration and effects of suspension by the ICRC or by the Commission**

- 16.12 If the implementation or funding of the Action, as the case may be, can be resumed, an amendment to the Agreement shall be made in accordance with Article 14.3 herein in order to establish the date on which the Action shall be resumed, to extend the duration 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 and/or funding conditions. The suspension is deemed lifted as from the date of resumption of the Action agreed by the Parties.
- 16.13 Where the suspension lasts longer than one-third of the implementation period of the Action any Party may terminate the Agreement in accordance with Article 17.
- 16.14 Any costs incurred by the ICRC 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 the conditions of Articles 16.9 and 19 are met.
- 16.15 Without prejudice to Article 16.14, neither Party shall be entitled to claim compensation on account of a suspension by the other Party.

#### **Force Majeure**

- 16.16 Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by Force Majeure, provided it takes any measure to minimise any possible damage.

## Article 17: Termination and end date of the Agreement

### Termination of the Action by either Party

- 17.1 The ICRC may terminate the Agreement in duly justified cases, for example, when the ICRC believes that the purposes of the Agreement can no longer be effectively or appropriately carried out, or 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 the cases of force majeure, serious threat to the safety or security of humanitarian workers or Final Beneficiaries, or is unable 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.
- 17.2 The Commission may decide to terminate the Agreement, in the following circumstances:
- a) if the ICRC or the Sub-delegatee undergoes legal, financial, technical or organisational changes likely to substantially affect in a negative way the implementation and management of the Action or call into question the decision by which the EU contribution is awarded;
  - b) if the ICRC or the Sub-delegatees fail to fulfil a substantial obligation incumbent on it under the terms of the Agreement;
  - c) in the event of force majeure or in the event of suspension pursuant to Article 16, where the suspension lasts longer than one third of the implementation period of the Action or where the necessary modifications to the Agreement would call into question the decision by which the EU contribution is awarded;
  - d) if the ICRC or the Sub-delegatees are bankrupt or being wound up, or is subject to any other similar proceedings;
  - e) if the ICRC, the Sub-delegatees or any related person, as defined in Article 17.5, is guilty of grave professional misconduct proven by any justified means;
  - f) if the ICRC or the Sub-delegatees are not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the applicable legal provisions;
  - g) if the ICRC, the Sub-delegatees, or any related person, as defined in Article 17.5, has intentionally or by negligence committed a substantial irregularity in performing the Agreement, or in the event of fraud, corruption or any other illegal activity by the ICRC or the Sub-delegatees to the detriment of the EU's financial interests;
  - h) if the Commission has evidence that the ICRC, the Sub-delegatees or any related person, as defined in Article 17.5, are guilty of misrepresentation or submit false or incomplete statements to obtain the EU contribution or provide reports that do not reflect reality to obtain or keep the EU contribution without cause;
  - i) if the ICRC or the Sub-delegatees committed any of the failings described in Article 16.1.
  - j) where the Commission is not in the position to approve the Final Report presented by the ICRC as it does not comply with the standard reporting requirements set out in Article 5.5 And 5.6; or
  - k) if the ICRC fails to report and take measures to address the situations defined in Article 5.1 and 7;
- 17.3 The grounds for termination by the Commission referred to in Article 17.3.b and 17.3.g also apply, *mutatis mutandis*, to any known actions committed by the Implementing Partners, contractors or staff of the ICRC to the extent that they are related to the implementation of the Action and have not been the subject of any appropriate remedial action by the ICRC in accordance with the provisions of Article 2.12.
- 17.4 For the purposes of Article 17.3 "any related person" shall mean any natural person which has the power to represent the ICRC or to take decisions on its behalf.
- 17.5 The Commission shall notify the ICRC of its intention to terminate the Agreement, specifying the reasons thereof, and inviting the ICRC to submit observations within 15 calendar days from the receipt of the

notification. If the ICRC submits observations, the Commission shall notify the ICRC of its decision on the termination. If the Commission decides to terminate the Agreement despite the observations submitted by the ICRC, 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.

### **Effects of termination**

- 17.6 Where the Agreement is terminated, payments by the Commission shall be limited to the amount determined on the basis of the eligible costs incurred by the ICRC pursuant to Article 19 herein and the actual level of implementation of the Action on the date when the termination takes effect.
- 17.7 The provisions of the Agreement shall continue to apply after the termination, to the extent necessary to allow an orderly liquidation of the Agreement.
- 17.8 Notwithstanding Article 17.6, the ICRC shall be entitled to payment only for the part of the Action carried out, and to reimbursement of legal commitments it entered into for implementing the Action before the written notice on termination was received by the ICRC and which the ICRC cannot reasonably terminate on legal grounds. The Commission shall recover the remaining part in accordance with Articles 21 and 22.
- 17.9 The ICRC shall have 3 months from the date when the termination takes effect to produce a final report in accordance with Article 5.5 and 5.6. If no final report is received within this time limit, the Commission may recover any amount already paid.
- 17.10 Where the Commission, in accordance with Article 17.3.b, is terminating the Agreement on the grounds that the ICRC has failed to produce the final report and, after a reminder, has still not complied with this obligation, the provisions of Article 17.7, 17.8 and 17.9 shall apply, subject to the following: (i) there shall be no additional time period from the date when the termination of the Agreement takes effect for the ICRC to produce a final report; and (ii) the Commission may recover any amount already paid.
- 17.11 Neither Party shall be entitled to claim compensation on account of a termination by the other Party.

### **End date**

- 17.12 Unless the Agreement is terminated earlier pursuant to Article 17 of the General Conditions, it shall end by the "end date", which is the moment of the payment of the balance by the Commission in accordance with Article 21 of the General Conditions or when the ICRC repays any amounts paid in excess of the final amount due pursuant to Article 22 of the General Conditions. In cases where there is no final payment by the Commission or final repayment by the ICRC, the "end date" shall occur 18 months after the end of the Implementation Period as defined in Article 2.2 of the Special Conditions. If any of the parties apply the dispute settlement procedure provided for in Article 18, the "end date" is postponed until the completion of such procedure.

### **Article 18: Applicable law and Settlement of Disputes**

- 18.1 The Parties shall endeavour to amicably settle any dispute or complaint relating to the interpretation, application or fulfilment of the Agreement, including its existence, validity or termination.
- 18.2 Nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party by its constituent documents or international law.
- 18.3 In default of amicable settlement in accordance with paragraph 18.1 above, any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.

## Article 19: Eligible costs

### Conditions for the eligibility of implementation costs

19.1 Eligible implementation costs incurred by the ICRC shall meet the following criteria:

- a) They are necessary for carrying out the Action. They are directly attributable to the Action and arise as a direct consequence of its implementation;
- b) They are actual, i.e. they represent real costs definitely and genuinely borne by the ICRC.
- c) They are reasonable, justified and comply with the principle of sound financial management, in particular regarding economy and efficiency;
- d) They are incurred during the Eligibility Period, whatever the time of disbursement:
  - (i) Costs relating to grants, services and works shall relate to activities performed during the Eligibility Period. Costs relating to supplies shall relate to their delivery and installation during the Eligibility Period. Consequently, cash transfers from the ICRC to the Sub-delegatees, payment of an advance (pre-financing) or entering into any commitment for future delivery of services, works or supplies (procurement) or for future execution of activities (grants), such as signing a contract or placing an order, are not incurred costs;
  - (ii) Except for multi-donor actions, pending payments corresponding to incurred costs shall either be paid before the submission of the Final Report or they shall be listed in the Final Report together with the estimated date of payment;
  - (iii) Costs related to 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.
- e) They are identifiable, in particular being recorded in the accounting records of the ICRC and determined according to the ICRC's accounting system. They are backed by effective supporting evidence (originals, as the case may be in electronic form) and are verifiable pursuant to Article 23;
- f) They are covered by the budget of the Action, set out in the Financial Statement of the Action annexed to the Single Form, distinguishing, to the extent possible the costs of Budget Implementation Tasks
- g) They comply with the applicable tax and social legislation.

### Implementation costs

19.2 The following categories of costs are eligible implementation costs, provided that they satisfy the conditions of eligibility set out in Article 19.1:

- a) The costs of the ICRC's staff directly assigned to the implementation of the Action corresponding to salaries plus social security charges and other statutory costs included in the remuneration of the staff and provided in accordance with the ICRC's policy. The ICRC shall retain evidence regarding the time worked by the staff be that through a time-recording system, a reliable method of apportionment or through an employment contract stipulating the precise assignment to the Action. 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;
- b) The costs of travel by the staff directly assigned to the implementation of the Action and related subsistence allowances, provided in line with the usual practices of the ICRC;
- c) The costs of funding by the ICRC to Contractors and Implementing Partners for implementation of the Action described in Single Form such as:
  - i) Costs for equipment (new or used) which are directly attributable to the Action;
  - ii) Costs for goods and services (transport, storage and distributing, rent of equipment, etc.) which are directly attributable to the Action;
- d) Taxes, duties and charges, including VAT, paid by the ICRC in relation to the costs referred to in point (a), (b) or (c), provided the ICRC cannot recover them.

- 19.3 The costs referred to in 19.2.a, 19.2.b and 19.2.c, attributable to the functioning of the field offices necessary to implement the Action, are eligible in proportion to the amount of activity directly attributable to the Action.

### **Remuneration**

- 19.4 A fixed percentage of the eligible implementation costs, as stated in Article 3.3 of the Special Conditions, and not exceeding 7%, may be claimed by the ICRC or the Sub-delegatees as remuneration.
- 19.5 Subject to the above, for comparable Actions and Actions where there is more than one donor the amount claimed as remuneration shall not in, percentage terms, be higher than for other comparable contributions.
- 19.6 The remuneration does not need to be supported by accounting documents.

### **Ineligible costs**

- 19.7 The following costs are ineligible in addition to any other costs not fulfilling the conditions set out in Article 19.1:
- a) Debt and debt service charges;
  - b) Provisions for losses or debt;
  - d) Expenditure financed by other sources;
  - e) Purchases of land or buildings, unless otherwise specified in the Agreement;
  - f) Exchange losses;
  - g) Contributions in kind. The cost of staff assigned to the Action is not a contribution in kind and may be considered as co-financing in the Budget when paid for by the ICRC or the Sub-delegatees.

### **Sub-delegation**

- 19.8 The costs incurred by the Sub-delegatees are eligible under the same conditions than those of the Organisation.

## **Article 20: Payments**

- 20.1 An amount of 80% of the EU's contribution to the Action shall be provided as pre-financing. The process for the initial pre-financing payment will be launched automatically by the Commission upon receipt of the signed Agreement and the ICRC need not submit any request for this pre-financing payment. The Commission shall make the pre-financing payment to the ICRC within 30 calendar days following receipt of the signed Agreement. The ICRC's rules and procedures pertaining to bank interest shall apply, and an equal treatment among donors shall be ensured. This is based on the understanding that these rules and procedures conform to internationally accepted standards.
- 20.2 The ICRC shall present a request for the payment of the balance still claimed within the deadline established in Article 4.2 Special Conditions. A payment request shall include the following essential elements: ICRC's name, amount in euro and date of the final payment request. Where at least one essential element is missing, the payment request shall be rejected. The payment request shall be accompanied by the following: (i) a Final Report, drawn up in terms of Article 5.5 and 5.6; (ii) A management declaration in accordance with Article 5.7;
- 20.3 The Commission shall pay the balance due to the ICRC 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 16.4 or to suspend payments pursuant to Article 16.1.
- 20.4 The payment shall be made upon approval of the Final Report. The final amount shall be established in line with Article 21. Approval of the requests for payment and of the accompanying report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information contained therein.
- 20.5 The Commission shall make payments in Euro into the ICRC's bank account indicated in the electronic exchange system. It is the responsibility of the ICRC to notify the Commission in due time of any changes to this data.

### **Late payment interest**

- 20.6 In case of late payment of the amounts stated in Article 5 of the Special Conditions and 20.3 of the General Conditions the following conditions apply:
- a) On expiry of the time limits for payments specified in Article 20.1 and 20.3, the ICRC shall receive interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros. 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 EU, increased by three and a half percentage points;
  - b) The suspension of payments by the Commission in accordance with Article 16.1 shall not be considered as late payment;
  - c) 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 20.2. Any partial payment shall first cover the interest;
  - d) By way of exception to Article 20.4.c, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, the Commission shall pay such interest to the ICRC only upon request from the ICRC submitted within two months of it receiving late payment;
  - e) The interest shall not be treated as an income for the purposes of determining the final amount of the EU contribution within the meaning of Article 21.

### **Article 21: Final Amount**

- 21.1 The Commission shall determine the final amount of the EU contribution when approving the ICRC's final report. Without prejudice to Article 23, the Commission shall then determine the balance still due to the ICRC or the amount to be recovered.
- 21.2 Without prejudice to Article 20.5 the final amount shall be the lower of the following two amounts:
- a) The sum of the eligible costs approved by the Commission and the related remuneration;
  - b) The maximum EU contribution referred to in Article 3.2 of the Special Conditions.
- 21.3 The ICRC accepts that the contribution under this Agreement shall be limited to the amount required to balance income generated by the Action, donor contributions and eligible costs.
- 21.4 The Commission shall recover pursuant to Article 22 any amount paid in excess.
- 21.5 Where the Action is not implemented, is not implemented in line with the Agreement, is implemented partially or late, or if the ICRC has substantially breached a contractual obligation under the Agreement, for example on Communication and Visibility, the Commission may, after allowing the ICRC to submit its observations, reduce the EU contribution accordingly.

### **Article 22: Recovery**

- 22.1 Where an amount is to be recovered under the terms of the Agreement, the ICRC shall repay in Euro to the Commission the amount due.
- 22.2 Before recovery, the Commission shall formally notify the ICRC of its intention to recover any undue amount, specifying the amount and the reasons for recovery and inviting the ICRC to make any observations within 30 calendar days from the date of receipt of the notification. If the ICRC does not submit any observations or if, after examination of the observations submitted by the ICRC, the Commission decides to pursue the recovery procedure, the Commission may confirm recovery by formally notifying to the ICRC a debit note ("debit note"), specifying the terms and the date for payment.
- 22.3 If the ICRC does not make the payment by the date specified in the debit note, the Commission shall recover the amount due:
- a) By offsetting it against any amounts owed to the ICRC by the EU;
  - b) By taking legal action in accordance with Article 18, or, where applicable, by adopting an enforceable decision in accordance with Article 299 of the Treaty on the Functioning of the EU;
  - c) In exceptional circumstances, justified by the necessity to safeguard the financial interests of the EU, the Commission may recover by offsetting before the deadline specified in the debit note without the ICRC's prior consent.

- 22.4 If the ICRC fails to repay by the due date, the amount due shall be increased by late payment interest calculated at the rate indicated in Article 20.6.a. The interest shall be payable for the period elapsing from the day after the expiration of the time limit for payment up to and including the date when the Commission actually receives payment in full of the outstanding amount. Any partial payment shall first cover the interest.
- 22.5 Bank charges incurred from the repayment of amounts due to the Commission shall be borne entirely by the ICRC.

## **Article 23: Accounts, technical and financial checks**

### **Accounting**

- 23.1 The ICRC shall keep accurate and regular records and accounts of the implementation of the Action.
- 23.2 Where feasible, the ICRC shall maintain the EU contribution in Euro denominated bank accounts. The ICRC may pool the EU contribution together with contributions from other donors. They may be exchanged for other currencies in order to facilitate their disbursement. If interest in pre-financing is due the accounting methods of the ICRC shall make it possible to identify the payments by the Commission and the interest or other benefits yielded by those funds.

### **Archiving**

- 23.3 For a period of five years from the End Date in 17.12 or up to the date of the limitation period of any claim pursuant to the applicable law governing the Agreement and any contracts or grants concluded under the Agreement if the latter last longer, the ICRC shall keep and make available according to Article 23.4 all relevant financial information in its original form (electronic as the case may be) or, in exceptional and duly justified cases, certified copies of original documents related to the Agreement and on any procurement contracts or grant agreements concluded under this Agreement.

### **Access**

- 23.4 The ICRC shall allow the Commission and the European Court of Auditors, or any other representative authorised by the Commission to conduct desk reviews, and on-the-spot checks on the use made of the EU contribution (including procedures for the award of procurement contracts and grants) on the basis of supporting accounting documents and any other documents related to the financing of the Action.
- 23.5 The ICRC agrees that the European Anti-Fraud Office ("OLAF") may carry out on-the-spot checks, investigations and verifications in accordance with the procedures laid down by EU law for the protection of the financial interests of the EU against fraud and other irregularities.
- 23.6 To that end, the ICRC undertakes to grant officials of the Commission, OLAF and the European Court of Auditors and their authorised agents access to sites and premises at which operations financed under the Agreement are carried out, and to any documents and computerised data concerning the technical and financial management of those operations. The ICRC shall take all necessary measures to facilitate these checks. The ICRC shall grant access by authorised agents of the Commission, OLAF and the European Court of Auditors on conditions of confidentiality, without prejudice to public law obligations to which it is subject. Documents must be accessible and filed in a manner permitting inspection, the ICRC being bound to inform the Commission, OLAF or the European Court of Auditors of the exact location at which they are kept.
- 23.7 The Commission shall inform the ICRC of the planned on-the-spot missions by agents appointed by the Commission or the Court of Auditors in due time in order to ensure adequate procedural matters are agreed upon in advance.
- 23.8 The desk reviews, investigations and on-the-spot checks referred to in Article 23 shall refer to a verification which shall be performed in accordance with the verification clauses agreed between the ICRC and the Commission. This is without prejudice to any cooperation agreement between OLAF and the ICRC's anti-fraud bodies.