Bilateral Arrangement

on

Indirect Management Implementation

of the IPA

II CBC programme

<Beneficiary XXX> - <Beneficiary YYY>

Proposal

Version of 21/11/2014

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**Between**

* <name and function of the National Authorising Officer in Beneficiary xxx where the Contracting Authority will be located>

**and**

* <name and function of the Head of the Operating Structure (HoS) in Beneficiary yyy, where the Contracting Authority of the programme is not located>

from now onwards referred as **“Parties”**,

In compliance with:

1. Regulation (EU) no. 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (hereinafter referred to as the “IPA II regulation”);
2. Regulation (EU) no. 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union’s instruments for financing external action (hereinafter referred to as the “Common Implementing Regulation”);
3. Commission Implementing Regulation (EU) no. 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) no. 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (hereinafter referred to as the “IPA II implementing regulation”);
4. The CBC programme document of the Programme <Beneficiary xxx> - <Beneficiary yyy>, approved by the European Commission (EC) on <date> with Decision <number and date>, involving territorial units of <name of the Beneficiaries xxx and yyy>, the former of which hosts the national authorising officer, the management structure and the audit authority;
5. The Framework Agreements (FWA) between the European Commission and the Governments of <Beneficiary xxx> and <Beneficiary yyy> on the arrangements for implementation of Union financial assistance to <names of the Beneficiary xxx and Beneficiary yyy> under the Instrument for Pre-accession Assistance (IPA II);
6. The Financing Agreements between the European Commission and the Governments of <Beneficiary xxx> and <Beneficiary yyy>, concerning the CBC programme <Beneficiary xxx> - <Beneficiary yyy> under the IPA II programme;
7. The Multi-country Indicative Strategy Paper (2014-2020) adopted on 30/06/2014 for the IPA II Multi-beneficiary programme;

within the institutional, legal and financial framework of cross-border cooperation referred to in art. 4.4 of the IPA II Regulation and art. 27(b) of the IPA II Implementing Regulation;

**AGREE ON THE FOLLOWING**

Article 1 – Subject matter

1. By this bilateral arrangement, the National IPA Coordinators (NIPACs) or the territorial cooperation coordinators of <Beneficiary xxx> and <Beneficiary yyy>, hereinafter referred to as “the Participating Beneficiaries” (PBs) confirm the indirect management for the IPA II CBC programme <Beneficiary xxx> - <Beneficiary yyy>, and,

in accordance with article 7 and article 52 of the IPA II Implementing Regulation,

agree to appoint the National Authorising Officer (NAO) and operating structure of <Beneficiary xxx> as the joint management structure of the programme, and the <audit authority in Beneficiary xxx> as the audit authority of the programme.

1. Without prejudice to the arrangements laid down in the IPA II Implementing Regulation and in the Programme Document, this bilateral arrangement completes the legal and administrative framework for the implementation of the IPA II CBC programme <Beneficiary xxx> - <Beneficiary yyy>.

Article 2 – Objectives to be pursued

1. The Parties have agreed to sign this bilateral arrangement, assuming the obligation to fulfill all the requirements of the respective national law and the EC regulations that apply to, with the aim of ensuring the common and effective implementation of the IPA II CBC programme <Beneficiary xxx> - <Beneficiary yyy>.
2. This bilateral arrangement sets up the measures agreed between the Parties in order to allow them to exercise their duties arising from the IPA II Regulation, the Common Implementing Regulation and the IPA II Implementing Regulation and to ensure the compliance of the PBs with their obligations regarding the recovery of undue payments as set out in art. 7 of the Common Implementing Regulation, in articles 9, 10[[1]](#footnote-1) & 54[[2]](#footnote-2) of the IPA II Implementing Regulation and article 41 of the FWA.
3. This bilateral arrangement also envisages provisions concerning the rules and procedures for public procurement as referred to in art. 45 of the IPA II Implementing Regulation.

Article 3 – Responsibilities and duties of the joint management structure

1. The joint management structure, that is the NAO and the operating structure of <Beneficiary xxx>, shall be responsible for managing and implementing the CBC Programme <Beneficiary xxx> - <Beneficiary yyy> in accordance with the principle of sound financial management, and performing the duties listed in articles 9 & 10 of the IPA II Implementing Regulation. The joint management structure commits itself to allow the operating structure of <Beneficiary yyy> to discharge the duties arising from the IPA II Implementing Regulation and the Rules of Procedures of the Joint Monitoring Committee (JMC), and to provide access to information and relevant documents in order to ensure the quality and the effectiveness of the implementation of the IPA II CBC programme <Beneficiary xxx> - <Beneficiary yyy>.
2. The operating structure of <Beneficiary xxx> should include a contracting authority. The latter, <name of the contracting authority>, is in charge of the selection of operations through calls for proposals or other procurement procedures, as required by the type of operation, under the cross-border programme <Beneficiary xxx> - <Beneficiary yyy>.
3. The <name of the contracting authority> will participate in the meetings of the JMC in an advisory capacity.
4. The joint management structure will submit to the JMC in due time for information, discussion and approval all the documents and items referred to in the articles 19 & 52.2 of the IPA II Implementing Regulation, article 78 of the FWA and the rules of procedure of the JMC.
5. The joint management structure shall cooperate with the JMC in order to ensure the quality of the implementation of the programme document, as referred in article 19.2 of the IPA II Implementing Regulation.
6. The joint management structure, after consulting the operating structure of <Beneficiary yyy>, sets up a Joint Technical Secretariat (hereinafter referred to as ‘JTS’), that will assist the European Commission (EC), the operating structures and the JMC, in carrying out their respective duties.

Article 4 – the Audit Authority

1. The <audit authority in Beneficiary xxx> is the audit authority of the programme <Beneficiary xxx> - <Beneficiary yyy>.

*Either*

1. The audit authority referred to in paragraph 1 has the authorisation to directly carry out its functions in the whole territory covered by the cross-border cooperation programme.

Its functions are stipulated in annex A, clause 5 of the FWA.

*OR*

The audit authority referred to in paragraph 1 does not have the authorisation to directly carry out its functions in the whole territory covered by the cross-border cooperation programme. Therefore, it shall be assisted by a group of auditors comprising a representative of each Beneficiary participating in the cross-border cooperation programme. The group of auditors shall be chaired by the audit authority of the <Beneficiary xxx>.

The group of auditors shall carry out audits on actions and operations’ transactions in line with internationally accepted auditing standards and in accordance with an audit strategy. Further guidance and definitions from the EC may complement those standards.

1. The audits shall aim at verifying the legality and regularity of the actions and operations’ transactions.
2. Under the responsibility of its head, the audit authority shall in particular fulfil the functions and assume the responsibilities as stipulated in Annex A, clause 5.3a of the FWA.

FWA

1. The audit authority will draw up and submit reports and opinion to the EC and the Government of <Beneficiary xxx>, with a copy to the NIPAC and the NAO of <Beneficiary xxx> and to the NIPAC of <Beneficiary yyy> as stipulated in Annex A, clause 5.3b of the FWA.

FWAFWAFWA

1. When the constitution of a group of auditors will be necessary, the HoS of <Beneficiary yyy> will inform the NAO and Head of the audit authority of <Beneficiary xxx> about the name of the auditor appointed to fulfil this function in the territory of <Beneficiary yyy>, no later than six months of the coming into effect of the first financing agreement related to the CBC programme <Beneficiary xxx> - <Beneficiary yyy>.

The ‘auditor’ in <Beneficiary yyy> shall be appointed by the NIPAC of <Beneficiary yyy> as

EITHER

A representative of the institution which is meant to play the role of audit authority under indirect management in <Beneficiary yyy>

OR

A person or company member of a national accounting or auditing body or institution who is a member of the International Federation of Accountants (IFAC) or who commits himself or herself to undertake this engagement in accordance with the IFAC standards and ethics. This person or company is registered as a statutory auditor in the public register of a public oversight body in an EU Member State in accordance with the principles of public oversight set out in Directive 2006/43/EC of the European Parliament and of the Council, or in <Beneficiary yyy> and this register is subject to principles of public oversight as set out in the legislation of <Beneficiary yyy>.

The audit authority of the programme will issue instructions in writing to the auditor in <Beneficiary yyy> on

* how the latter will have to organise his or her work and
* how frequently and in which format the results of his or her verifications will be conveyed to the former as a contribution for the compilation of the reports mentioned in paragraph 4.b above.

Article 5 – The Joint Monitoring Committee

1. The PBs agree to constitute the JMC which should assume the role of a sector monitoring committee. The JMC shall be set up no later than six months after the coming into effect of the first financing agreement related to the CBC programme <Beneficiary xxx> - <Beneficiary yyy>.
2. All provisions of article 78 of the FWA dealing with the purpose and functions of the JMC will be respected without exception.
3. Each PB shall appoint its representatives to the JMC in equal numbers.
4. The EC and the contracting authority shall participate in the work of the JMC in an advisory capacity.
5. The JMC will report to the IPA Monitoring Committee of <Beneficiary xxx>.
6. A representative of <Beneficiary yyy> shall chair the JMC.
7. The JMC shall adopt its rules of procedure at its first meeting. These rules should have been drawn up by the operating structures of <Beneficiary xxx> and <Beneficiary yyy> in consultation with the EC.
8. It shall be ensured that any assessment and/or decision of the JMC will be unbiased and must not be influenced by partial interest of anyone of its members.

When a JMC meeting has to examine and provide an advisory opinion on the list of operations selected through calls for proposals before the grant award decision is taken, those members with a potential conflict of interest will be invited to leave the meeting room until the discussion leading to the issuance of their advisory opinion would not have ended.

1. Prior to the approval of the final report in the evaluation of a call for proposals, the contracting authority will submit to the JMC of the programme the list of projects recommended for financing.

This list will contain the names of the applicants and co-applicants, the EU amount requested, the title of the action and a brief description of the operation. It will be submitted by electronic means.

The JMC will have a maximum of fifteen calendar days to issue an opinion that would either show that they do not have anything against or express a reservation on any of the projects proposed for grant award. This opinion may be issued following a meeting or a consultation by written procedure.

Whatever the reservation on the list of projects may be, it has to be substantiated on grounds that may be unknown to the contracting authority such as national, regional or local policy inappropriateness, misinformation, misrepresentation of facts, overlapping and even potential double funding.

In the event that the evaluation committee will be confronted with the dilemma of selecting one out of two applications with the same score when the financial envelope available would not allow to fund both of them, the JMC will also issue a well justified opinion on its preferred application for funding.

1. Each PB has equal voting rights regardless of the number of representatives it has appointed. As a general rule, the decision making within the JMC will be by consensus between the two national delegations of the PBs present at the meeting (one vote per delegation, according to the principle ‘one Beneficiary one vote’). Deviations from this general rule are possible if specified in the rules of procedure of the JMC.
2. The JMC in order to carry out its mandate is supported by the JTS.

Article 6 – The Joint Technical Secretariat

1. The tasks and composition of the JTS are described in article 79 of the FWA.
2. The main office of the JTS of the programme <Beneficiary xxx> - <Beneficiary yyy> will be located in <name of the city>, <Beneficiary xxx>. The JTS will have an antenna office in <name of the city>, <Beneficiary yyy>.
3. The operation costs for the functioning of the JTS, apart from the technical assistance budget, may be financed by budgetary resources of <Beneficiary xxx> and <Beneficiary yyy>. This will be carried out in a coordinated and transparent way between both Beneficiaries.
4. The JTS will be staffed with nationals from <Beneficiary xxx> and <Beneficiary yyy> on equal numbers.
5. The JTS will share with the EC all reports on monitoring visits to cross-border operations and will allow the EC’s access to a system for gathering reliable information on the implementation of the programme.

Article 7 – Selection of operations

1. The selection of operations under the programme <Beneficiary xxx> - <Beneficiary yyy> will abide by the provisions of article 70 of FWA.
2. The impartial evaluation of calls for proposals will be ensured by the formal and prompt establishment of an evaluation committee, comprising a non-voting chairperson, a non-voting secretary and an odd number of voting members (the evaluators).
3. The minimum number of evaluators will be three.
4. The appointment of the chair and the secretary of the evaluation committee will be the prerogative of the contracting authority of the programme; while the nomination of the voting members will be done by the operating structure of <Beneficiary xxx> making sure that the evaluation committee includes one more voting member from <Beneficiary yyy> than from <Beneficiary xxx>.

In the appointment of the voting members, each of them will have a replacement.

1. Evaluators must be provided with detailed information regarding the planned timetable and the workload that participating in the proceedings of the evaluation committee implies.

The joint management structure and the operating structure of <Beneficiary yyy> shall make sure that the members of the evaluation committee are available during the scheduled evaluation period.

Every voting member must have a reasonable command of English language and the technical and administrative ability to give an informed opinion on the grant applications.

The identity of the voting members is confidential.

1. The members of the evaluation committee (i.e. the chairperson, the secretary and the evaluators) are appointed on a personal basis by the contracting authority and the appointments are submitted to the EC at the latest 15 working days prior to the start of the evaluation in order to get its approval. If the EC does not object within five working days, the committee is deemed to be approved. The EC must be invited to appoint an observer and is encouraged to attend all or part of the meetings. Independent experts recruited under service contracts may only attend as observers. Attendance by other observers requires prior approval by the EC.
2. Where the applications received are particularly numerous or highly technical, it may not always be possible for the evaluation committee to examine each one in detail. If necessary, all or part of the detailed examination may be carried out by assessors so that the evaluation committee may conduct its deliberations on the basis of their assessments.

The assessors are selected by the contracting authority. The list must be submitted for approval to the EC. Outside assessors who are not officials or other staff of the contracting authority or the public administration of the Beneficiaries must be selected using the relevant procedure for service contracts.

If assessors are not used, the evaluation committee completes one collective evaluation grid for each respective step of the procedure.

Assessors may attend the meetings of the evaluation committee as observers to present the results of their assessment and answer any questions from the evaluation committee members.

Assessors work under the supervision of the chairperson. Although the same assessors may be used for the different stages of the evaluation of a call for proposals, different types of expertise are required for the different assessments and it is recommended to use different persons wherever possible.

The external assessors must have an in-depth knowledge of the issues covered by the cross-border programme <Beneficiary xxx> - <Beneficiary yyy>. Their expertise should be checked against their CVs. A minimum of five years’ experience in a particular thematic priority and some experience in project management should be expected.

1. The provisions on impartiality and confidentiality, as well as on responsibility, apply to the proceedings of the evaluation committee in accordance with the procedures and standard documents laid down and published by the EC for the implementation of external actions, in force at the time of the launch of the procedure in question.

Article 8 – Monitoring

Monitoring will be carried out at two levels, to wit: at programme and at project/operation level.

The findings of monitoring at programme level will be summarised at annual and final implementation reports in accordance with the provisions of article 80 of the FWA. This report will follow the model provided as an annex to the Financing Agreement. Following its approval by the JMC, it will be submitted to the EC, the NIPACs of <Beneficiary xxx> and <Beneficiary yyy>, and the NAO of <Beneficiary xxx> by the joint management structure of the programme.

The operating structure and controllers of <Beneficiary yyy> (see art. 9 below) will cooperate with the joint management structure to compile the annual and final implementation reports.

The contribution of the JTS in data collection for the compilation of these reports will be instrumental.

The project/operation level monitoring will in turn be divided into a result oriented monitoring and a compliance monitoring as a response to the diverse functions that monitoring may have in relation to different stakeholders.

On the one hand, there is a growing attention by the EC and operating structures on receiving information about concrete results achieved by CBC projects, information that must be clear, exhaustive, and usable for analysis/decision making.

On the other hand, the contracting authority is still putting a lot of emphasis on compliance. As the level of capacity among applicants/beneficiaries varies significantly, the contracting authority maintains a close check on compliance.

The first type of monitoring should provide concrete information on project implementation, its achievements, difficulties and prospects. It will be based on the result-oriented-monitoring (ROM) method, reporting against DAC[[3]](#footnote-3) criteria (relevance, efficiency, effectiveness, impact and sustainability) with grades and narrative. The corresponding model report should made active references to logframe/project logic for basing its analysis. The report should be brief (a couple of pages of narrative and one page of general information/contractual data should be sufficient), informing on project implementation and prospects using evidence and indicators. It must contain grades to facilitate processing.

The operating structures of the programme <Beneficiary xxx> - <Beneficiary yyy> will basically rely on the services of the JTS to conduct this type of monitoring.

The second type of monitoring should be strictly dedicated to project/operation compliance with legality and regularity of transactions. It should assess the fulfilment of crucial compliance aspects: payments, budget, reporting, filing, procurement and visibility. The model report could be based on questions that have been used for years under IPA I monitoring templates, without grades (as its content is very much linked to a specific CBC action and the possibility of extracting information for wider use is less extended).

Staff of the contracting authority will be in charge of carrying out this type of monitoring with the assistance of the controllers in <Beneficiary yyy> and, whenever required, the support of the JTS.

The Delegations of the European Union (DEUs) located in <Beneficiary xxx> and <Beneficiary yyy> will receive electronically copies of each monitoring report either for result-oriented-monitoring or compliance assessment.

The DEUs will have the prerogative to monitor the operational and financial management of projects in their respective territories at any time during the execution period of the contracts.

Article 9 – The control system

1. In accordance with articles 9 & 10 of the IPA II Implementing Regulation, the joint management structure shall verify the legality and regularity of expenditure. This duty will be satisfied through proper internal control systems and through the institution of a control mechanism in <Beneficiary yyy>.

In order to validate the expenditure incurred in its territory, <Beneficiary yyy> shall set up a control system making it possible to verify the delivery of the products and services funded by the EU, the soundness of the expenditure declared for operations or parts of operations implemented on its territory, and the compliance of such expenditure and of related operations, or parts of those operations, with Community and its own national rules.

For this purpose, the operating structure of <Beneficiary yyy> shall designate the controllers responsible for verifying, whenever necessary, the correctness, legality and regularity of the expenditure declared by any grant beneficiary established in <Beneficiary yyy> participating in the operation.

1. The PBs may decide to designate a single controller for the whole programme area.
2. <Beneficiary yyy> shall ensure that, whenever required, the expenditure can be validated by the controllers within a maximum period of fifteen days from the date of its submission by the lead beneficiary/coordinator to these controllers.
3. The operating structure of <Beneficiary yyy> could cooperate with the joint management structure of <Beneficiary xxx> to adopt a sort of control manual for the programme <Beneficiary xxx> - <Beneficiary yyy>.
4. The operating structure of <Beneficiary yyy> hosting the programme controllers will provide adequate information on the structures and procedures of its control system to the joint management structure of <Beneficiary xxx> in compliance with the audit trail, and, if adopted, the *Control Manual* for the programme <Beneficiary xxx> - <Beneficiary yyy>”.
5. The process of verification performed by the controllers includes:

* Full administrative verification (100%) of the pieces of expenditure associated with the input of the beneficiaries established in <Beneficiary yyy>;
* Physical on-the-spot checks on a sample of activities and expenses based both on the type of operation and on the type of beneficiary, selected following the sampling strategy of the control procedure.

1. The control system provides for the “Declaration on Validation of Expenditure” (hereinafter referred to as “DVE”) confirming the legality and regularity of the expenditure declared by any beneficiary in <Beneficiary yyy>. The DVE is issued by the competent controllers, independent from the implementation of the programme and the operations. The designation of these controllers is a precondition for the contracting authority to sign the IPA II grant contracts. The national authorities of <Beneficiary yyy> assume the financial responsibility for the funds allocated to the beneficiaries in its respective national territory.
2. All irregularities that have been reported to the operating structure of <Beneficiary yyy> shall be reported to the joint management structure located in <Beneficiary xxx>.
3. In order to draft the Annual Implementation Report, the controllers have to submit to the joint management structure an annual control report setting out the findings of the controls carried out.
4. Where the verification of the delivery of the products and services funded by the EU can be carried out only in respect to the entire operation, such verification shall be performed by the controller of the participating country where the lead beneficiary is located or by the joint management structure.
5. The formal role of the joint management structure regarding the controllers is to ensure, among other purposes, that the expenditure of each beneficiary participating in an operation has been properly validated. Thus, the joint management structure must monitor the quality of the control process and draw up any necessary conclusion to safeguard the correct implementation of the programme. The joint management structure will obtain and verify the DVEs prepared by the controllers, and assess the measures taken in respect of irregularities detected, to obtain assurance, in its supervisory capacity, that the tasks have been properly carried out.
6. The joint management structure will provide capacity building to the controllers in order to ensure a uniform control activity.
7. In case of different interpretation of the eligibility rules, the joint management structure tries to find a solution in collaboration with the controllers, giving a common interpretation of the programme rule. Where appropriate, the joint management structure will request a final interpretation from the EC competent service.
8. The joint management structure ensures that all the outstanding questions will be fully followed up before any request for payment is accepted. No request for payment will be accepted and no payment will be transferred to the lead beneficiary/coordinator until full and satisfactory information has been provided.
9. The joint management structure of <Beneficiary xxx> and the operating structure of <Beneficiary yyy> shall give access to their premises, documents and books, including electronic records, related to the expenditure financed by the Community funds, to the EC officer or authorized EC representatives, duly empowered to carry out on-the-spot audits. The joint management structure of <Beneficiary xxx> and the operating structure of <Beneficiary yyy> shall cooperate so that the EC officer or authorized EC representatives would be able to check the actual functioning of the control system and the correctness of transactions.

Article 10 – Irregularities, Corrections and Financial Liability

1. Irregularities and financial corrections are defined and tackled following the rules laid down in article 17 of the IPA II Implementing Regulation.
2. The protection of the financial interest of the European Union will strictly follow the provisions of article 51 of the FWA. Any situation as defined in Article 51(5) occurring at any time during the implementation of IPA II assistance or being the result of an audit may lead to the recovery of the funds by the EC from the IPA II beneficiaries. The NAO shall recover the Union contribution paid to the IPA II beneficiaries in <Beneficiary xxx> and <Beneficiary yyy> from those who were in any situation defined in Article 51(5) or benefited from it, in accordance with national recovery procedures for public funds. The fact that the NAO does not succeed in recovering all or part of the funds shall not prevent the EC from recovering the funds from the IPA II beneficiaries.
3. The operating structure of <Beneficiary yyy>, whenever irregularities or fraud are detected in the transactions of a beneficiary established in its territory, is responsible for reporting to the EC and, at the same time, informing the joint management structure of <Beneficiary xxx>.
4. When irregularities and fraud are discovered prior to verifying expenditure in <Beneficiary yyy>, the controllers have to ensure that any corrections required have been satisfactorily implemented before verifying the expenditure. The operating structure of <Beneficiary yyy> will report this kind of irregularities and fraud detected only to the joint management structure of the programme in <Beneficiary xxx>.
5. In case the joint management structure is not able to recover unjustified funding from the lead beneficiary/coordinator, the national authorities on whose territory the beneficiary profiting from this unjustified funding is established bear the financial liability for irregularities committed by this beneficiary.
6. Should expenses for external legal advice or legal charges arise for the joint management structure in the scope of a recovery procedure, these are to be reimbursed to the joint management structure by the national authorities of the country where the concerned beneficiary is established, provided that these authorities are informed of and involved in the recovery procedure.
7. In case the joint management structure is responsible for an irregularity or fraud, the liability vis-à-vis the EC falls on the national authorities of <Beneficiary xxx>. In case of system errors or irregularities, both the national authorities of <Beneficiary xxx> and <Beneficiary yyy> will jointly bear the financial consequences. Each country will be responsible in proportion to the IPA contribution allocated for final beneficiaries in their territories.

Systemic errors may conduct to suspension of payments in accordance with the provisions of article 40 of the FWA.

Article 11 – Procurement

1. The provisions of article 18 of the FWA on rules on procurement and award of grants shall apply.
2. All service, supplies, and work contracts and grant agreements shall be awarded and implemented in accordance with the procedures and standard documents laid down and published by the EC for the implementation of external actions, in force at the time of the launch of the procedure in question, unless otherwise provided for in Sectoral or Financing Agreements.

Article 12 – Taxes, customs duties and other fiscal charges

* + - * 1. The provisions of article 28 of the FWA on the rules on taxes, customs duties and other fiscal charges shall apply for both <Beneficiary xxx> and <Beneficiary yyy>.
        2. Union contractors shall be exempted from VAT for any service rendered and/or goods supplied and/or works executed under the Union financed contract in both the territory of <Beneficiary xxx> and <Beneficiary yyy>. Goods supplied or services rendered or works executed by a contractor to the Union contractor shall also be exempted from VAT in so far that they are connected with the objectives and activities under the Union contract.

The national authorities of the <Beneficiary yyy> will recognize the aforementioned exemption for operations under the programme <Beneficiary xxx> - <Beneficiary yyy> within their territory and put in effect a system for implementing this exception regardless of the fact that the Union contract may have been signed between the contracting authority of the programme, located in <Beneficiary xxx>, and an entity, acting as the contract lead beneficiary/coordinator, established in <Beneficiary xxx>.

* + - * 1. The exemption provided in paragraph 2 shall in principle be put into effect through ex-ante exemption in both <Beneficiary xxx> and <Beneficiary yyy>. Where this is not technically and/or practically feasible, it shall be put into effect through refund/offsetting.

Article 13 – Technical Assistance

1. The purpose and amount of the programme priority ‘technical assistance’ is laid down in article 72 of the FWA.
2. The contracting authority of the programme <Beneficiary xxx> - <Beneficiary yyy> will sign a service contract with the <CBC Body of Beneficiary xxx> by direct award as specified in the section <zzz> of the Financing Agreement of the programme.
3. The <CBC Body of Beneficiary xxx> will have as a consortium partner <the CBC Body or Operating Structure of Beneficiary yyy> under the aforementioned service contract.
4. The members of the consortium will sign a partnership agreement defining the responsibilities of each partner for the implementation of the service contract***,*** in conformity with its terms of reference, including the logical framework matrix and the budget of the action, which are annexes to the service contract.

The partnership agreement will elaborate on the obligations of the consortium partners, their liability, budgetary and financial management, accounting principles, modifications of the contract, reporting, information and publicity measures, intellectual property, confidentiality, cooperation with third parties, delegation and outsourcing, assignment of rights and obligations, legal succession, non-fulfilment of obligations or delay in their implementation, conciliation and mediation between partners, the project Steering Committee, and finally amendments of the agreement.

Article 14 – Retention of documents

1. All documents relating to the programme shall be made available for a period of at least three years following the closure of the programme.

Article 15 – Interpretation

1. The terms used in this bilateral arrangement shall bear the same meaning as attributed to them in the IPA II Regulation, the Common Rules of Implementation, the IPA II Implementing Regulation, the programme document and the text of the Framework Agreement. In case of divergence, the document which is the highest in hierarchy prevails.
2. Any references to European Parliament, Council or Commission Regulations are meant for the version in force of these regulations. Any modifications of these regulations shall directly apply to this bilateral arrangement through amendments.

Article 16 – Partial invalidity and unintentional gaps

1. If a provision of this bilateral arrangement is or becomes invalid of if this bilateral arrangement contains unintentional gaps or misprints, this will not affect the validity of the other provisions of this bilateral arrangement. The Parties will replace any invalid provision by a valid provision that is as close as possible to the purpose and intent of the invalid provision.
2. The Parties will fill up any unintentional gap or fix any misprint by a provision that better suits the purpose and intent of this bilateral arrangement, in compliance with the IPA II Regulation, the Common Rules of Implementation, the IPA II Implementing Regulation, the text of the Framework Agreement and the programme document.

Article 17 – Review and amendment

1. The implementation of this bilateral arrangement will be subject to periodical reviews when so decided between the Parties.
2. Any amendment agreed by the Parties will be in writing and will be part of this bilateral arrangement. Such amendment shall come into effect on the date determined by the Parties.

Article 18 – Termination

1. This bilateral arrangement shall terminate three years after the date of closure of the programme.
2. The joint management structure of <Beneficiary xxx> shall inform the operating structure of <Beneficiary yyy> about the programme’s closure within two months from the notice received by the EC.
3. The bilateral arrangement may be terminated by one Party by giving written notice to the other Party. This resolution shall take effect six calendar months from the date of the written and notified notice.

Article 19 – Settlement of differences

1. Differences arising from the interpretation and implementation of this bilateral arrangement will be settled amicably through consultation between the Parties.
2. In the absence of amicable settlement, each Party may refer the matter to arbitration in accordance with the *Optional Rules for Arbitration Involving International Organisations and States* in force at the date of this bilateral arrangement at the *Permanent Court of Arbitration*.
3. The language to be used in the arbitration proceedings shall be English. The appointing authority shall be an independent and recognized institution from any of the Parties involved or the Secretary General of the Permanent Court of Arbitration following a written request submitted by each Party. The Arbitrator’s decision shall be binding on all Parties and there shall be no appeal.

Article 20 – Resolution of complaints

1. Where a candidate, tenderer or applicant believes he has been adversely affected by an error or irregularity allegedly committed as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration, he may file a complaint to the contracting authority of the programme <Beneficiary xxx> - <Beneficiary yyy>.

The sole subject of the complaint shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision.

1. When a candidate, tenderer or applicant believes he or she has been adversely affected by an error or irregularity allegedly committed as part of a selection procedure or procurement, he or she may also file ordinary actions, provided the conditions are met.

The action shall be launched in accordance with the conditions and deadlines fixed by the national legislation of the contracting authority in <Beneficiary xxx>.

Article 21 – Notices

1. With the exception of the notice mentioned in article 18.3 above which shall be notified, any communication in connection with this bilateral arrangement shall be made in writing, duly signed and be supplied as an original document or scanned original document.
2. All communication must be in English language.
3. Any communication related to this bilateral arrangement must be sent to the following addresses:

[NIPAC of Beneficiary xxx]

[The NAO of Beneficiary xxx]

[The HOS of Beneficiary xxx]

[Head of the Audit Authority of Beneficiary xxx]

[The PAO of Beneficiary xxx]

[NIPAC of Beneficiary yyy]

[The HOS of Beneficiary yyy]

Article 22 – Entry into force

This arrangement shall enter into force on the day on which the last of the Parties informs the other one in writing of its approval in accordance with the national legislation or procedure of the Party.

Signatories:

|  |  |
| --- | --- |
| <Name of the signatory 1> | <Name of signatory 2> |
| <Function: NAO of Beneficiary xxx > | <Function: HOS of Beneficiary yyy > |
| Signature: | Signature: |
| Date: | Date: |

1. Please see also art. 76 of the FWA. [↑](#footnote-ref-1)
2. Please see art. 71 of the FWA. [↑](#footnote-ref-2)
3. OECD Development Assistance Committee. [↑](#footnote-ref-3)