

## Grant Award Standard Terms and Conditions

### 1 DEFINITIONS

Term	Definition
Activity Material	any material which are created or developed by the Grantee as a result of the Project Activities.
Agreement	includes the Grant Award Letter, these Standard Terms & Conditions as read together with all attachments, schedules, annexes, amendments hereto and other documents that are referenced in this agreement and/or referred to in all the aforementioned documents
Award	Funds provided by EUSMS to a recipient to carry out an approved program or project (based on an approved application or progress report).
Background Intellectual Property Rights	Intellectual Property Rights that exist and are owned by either party prior to the date of the Agreement and which will be used in connection with the Project. If any Background Intellectual Property Rights are used in the Materials, the Grantee warrants that its contribution towards the Material will not violate or infringe any existing third party's Intellectual Property Rights.
Capital Assets	any item with an acquisition cost of \$1,000 or more
Effective Date	the date of the last signature on the Agreement
Eligible Expenses	all reasonable and actual costs and expenses incurred in relation to the project activities and in accordance with the approved project proposal and budget
EUSMS	EUSMS gGmbH, an entity organised as a non-profit limited liability company under the laws of Germany having its registered address as Riesenburgerstrasse 43 81249 Munich, Germany
EUSMS Donor	Any party that has made a grant to EUSMS
Grant Award Letter	the letter from EUSMS to a Grantee confirming the award of a Grant and giving details of the Project Activities and the obligations of the parties to the Agreement
Grant Funds	the amount(s) described in the Grant Award Letter as being payable by EUSMS to the Grantee in support of the approved project activities
Grant Period	the period of the Grant as provided in the Grant Award Letter
Grantee	the recipient of any monetary funds, contribution or any other value in kind from EUSMS
Grants Pack	All the documents referred to in the Grants Award Letter (GAL) and the Standard Terms & Conditions which may be annexed to the GAL or available on the EUSMS website.

Intellectual Property Rights	Include any and all rights in patents, rights to inventions or innovations, copyright, moral rights, trade marks, goodwill, processes, biological organism varieties, data, database rights, software, know-how, trade secrets, confidential information, whether or not registered or unregistered, and all similar rights which subsist or will subsist now or in the future, in any part of the world.
New IP	any new Intellectual Property Rights which are created, developed or which otherwise arise as a result of the Project Activities.
Organization	any university, institution, research council or other organization (other than the Grantee) at which the Project Activities are carried out and/or to which Grant funds are received
Participant	any person or third party working on the Project Activities, including (as applicable) any applicant, collaborator, sponsor or research sponsor, supervisor, consultants, sub-awardees or contractors
Party/ Parties	EUSMS and/or the Grantee
Policies and Position Statements	sets of principles, rules and guidelines formulated or adopted by EUSMS to influence and determine all major decisions, actions and all activities being carried out by EUSMS. They are the specific methods/approaches employed to express policies in action in day-to-day operations of the organization.
Project	planned set of interrelated activities which are to be executed by the Grantee and funded by EUSMS as per the Grant Award Letter and the approved project proposal and budget over a fixed period and within certain cost and other limitations.
Project Activities	the activities funded by the Grant as described in the Grant Award Letter
Terms and Conditions	the terms and conditions on which the Grant is made which include the terms and conditions set out in this document, the Grant Award Letter and EUSMS's Policies and Position Statements as set out on our website from time to time.
Reporting material	all material which the grantee is required to provide to EUSMS for reporting purposes as specified in the Grant Award Letter.
us, we and our	EUSMS
you/your	the Grantee which is the individual, company, university, institution, research council or other organisation that has principal responsibility for administering the Grant, as identified in the Grant application/proposal and as specified in the Grant Award Letter

## 2 ENTIRE AGREEMENT

2.1 The Parties intend that this Agreement, together with all attachments, schedules,

annexes, amendments hereto and other documents that are referenced in this Agreement and/or referred to in this Agreement:

- (i) represent the final expression of the Parties' intent and constitutes the entire agreement between the Parties and supersedes all previous communications, discussions, understandings negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.
- (ii) save where expressly superseded, if any part of this Agreement conflicts with any other part, the following shall be the order of precedence:
  - (a) the Amendments to the Grant Award Letter;
  - (b) the Grant Award Letter;
  - (c) the terms and conditions contained in the Clauses of these Standard Terms and Conditions;
  - (d) the Annexures to the Grant Award Letter;
  - (e) EUSMS's Policies; and
  - (f) The Grantee's Proposal & Budget as approved by EUSMS.
- (iii) where it is expressly provided that the Grant Funds are subject to EUSMS Donor terms and conditions and any part of this Agreement, conflicts with any other part, the following shall be the order of precedence:
  - (a) the Amendments to the Grant Award Letter;
  - (b) the Grant Award Letter;
  - (c) the terms and conditions in the clauses of these Standard Terms and conditions;
  - (d) the Annexures to the Grant Award Letter;
  - (e) EUSMS Donor standard flow down provisions;
  - (f) EUSMS's Policies; and
  - (g) The Grantee's Proposal & Budget as approved by EUSMS.

2.2 The Grantee declares and guarantees that it has read and understood all the terms of this Agreement and accepts to be governed by them.

### **3 COMMENCEMENT DATE OF THE GRANT AGREEMENT**

Unless otherwise specified in the Grant Award Letter, this Agreement shall become effective on the date on which it is executed by all Parties to it. Costs incurred prior to the Effective Date shall not be eligible under the Agreement.

### **4 UNDERTAKINGS BY THE GRANTEE**

By signing this Agreement, the Grantee makes the following covenants and undertakings:

- (i) that all the information that was submitted by the Grantee in respect to this Agreement or that will be provided by the Grantee during the life of this Agreement is true and accurate in every material respect and does not and will not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein not misleading;
- (ii) that every consent, authorization or approval of governmental or public bodies or

authorities required in connection with the execution, delivery, validity or enforceability of this Agreement or the performance by the Grantee of its obligations hereunder or required to make this Agreement admissible in evidence has been obtained and is in full force and effect;

- (iii) that the Grantee is not in violation of any statute or regulation of any competent authority and no judgment or order has been issued which has or is likely to have any material adverse effect on the Grantee's business plan or make it improbable that he Grantee will be able to observe or perform its obligations under this Agreement;
- (iv) neither the acceptance of this Agreement by the Grantee nor the performance or observance of any of its obligations under the Agreement conflict with, or result in, any breach of any law, statute, regulation, agreement or other instrument, arrangement, obligation or duty by which the Grantee is bound or cause, where applicable, any limitation on any of the powers whatsoever of the Grantee howsoever imposed or on the right or ability of the Grantee to exercise such powers to be exceeded;
- (v) that all applicable taxes due and payable to any relevant authority have been paid by the Grantee;
- (vi) that save as otherwise disclosed to EUSMS in writing, there is no conflict of interest arising from this Agreement;
- (vii) that unless otherwise agreed, the Grantee shall advise EUSMS immediately of any change of Directors or any material or major happenings that may affect the Grantee's operations;
- (viii) that the Grantee shall not make a change to the Budget exceeding 10% on a budget line or work plan without the approval of EUSMS;
- (ix) that the Grantee shall provide the necessary professional and administrative support, personnel services and any other resources required for a successful implementation of the Project Activities;
- (x) that the Grantee shall ensure that its administration, capacity and internal control systems for managing the Grant Funds are adequate;
- (xi) that the Grantee shall ensure that the Project is carried out:
  - (a) with due diligence and efficiency;
  - (b) in conformity with appropriate administrative, technical, financial, economic, environmental and social standards and practices; and
  - (c) in accordance with the provisions of this Agreement;
- (xii) that the Grantee shall comply with and observe at all times the covenants,

agreements, stipulations and conditions contained in this Agreement or in any correspondence exchanges between the Grantee and EUSMS and shall not without the consent of the EUSMS vary or waive any of the terms thereof nor exceed the approved limits without EUSMS's approval.

## **5 REPRESENTATIONS & WARRANTIES**

5.1 This Agreement is entered into by and between EUSMS and the Grantee on the basis of the following representations and warranties made by the Grantee:

- (i) the Grantee is legally empowered to enter into this Agreement and to receive funds on the terms set out in this Agreement and there is no legal or other restriction on its ability to perform its obligations in respect of this Agreement;
- (ii) the Grantee has established and shall maintain precautions to prevent its employees, agents or representatives from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration to employees, agents or representatives of EUSMS for the purpose of influencing those persons to act contrary to the best interest of EUSMS or otherwise. This obligation shall apply to the activities of the employees of the Grantee in their relations with the employees of EUSMS and their families and/or third parties arising from this Agreement;
- (iii) that the Grantee has not and will not influence the action of, solicit, receive from, collude with, offer or give any payments to any person holding a public office or a director, official or employee of a public authority, public enterprise or any other organization in order to obtain, retain or secure any improper benefit or advantage and upon becoming aware of any fact or informative suggestive of the commission of any such act, the Grantee shall inform EUSMS;
- (iv) the Grantee is not in violation of any statute or regulation of any competent authority and/or its country of registration and no judgment or order has been issued which has or is likely to have any material adverse effect on the Grantee's operations or make it improbable that the Grantee will be able to observe or perform its obligations under this Agreement;
- (v) that there is no material litigation, arbitration or administrative proceedings pending or, to the best of the Grantee's knowledge threatened against the Grantee.

5.2 The foregoing representations and warranties shall be deemed to be given and made on and as of the commencement date of this Agreement and are continuing representations and warranties which are deemed to be repeated during the continuance of this Agreement.

## **6 ACTION ON BEHALF OF THE GRANTEE**

For purposes of this Agreement, the Grantee shall be represented by any person legally authorized in writing by the Grantee (hereinafter referred to as the 'Grantee's Representative'), to take any action required or permitted to be taken pursuant to this Agreement, and execute any documents required or permitted to be executed pursuant to this Agreement on behalf of the Grantee.

## **7 EVIDENCE OF AUTHORITY**

The Grantee shall furnish to EUSMS:

- (i) Sufficient evidence of the authority of the Grantee's Representative; and
- (ii) The authenticated specimen signature of such representative.

## **8 DISBURSEMENT OF GRANT FUNDS**

### **8.1 Conditions precedent to Disbursement of the Grant Funds**

The Grantee acknowledges that no disbursement shall be made with respect to the Grant Funds unless the following conditions have been fulfilled to the satisfaction of EUSMS or expressly waived by EUSMS in writing:

- (i) the Grantee has properly executed this Agreement and delivered counterparts thereof to EUSMS;
- (ii) the Grantee fulfills all Conditions Precedent required under this Agreement;
- (iii) EUSMS receives certified true and up to date copies of the Grantee's memorandum and articles of association and certificate of incorporation (for companies in which case the copies should be certified by the Organisation's company secretary), certificate of registration of business name (for partnerships and sole proprietors) or any other documents requested for as the case may be;
- (iv) the Grantee's compliance with the terms and conditions of this Agreement and there being no breach or default;
- (v) EUSMS will have received all due reports and supporting documentation from the Grantee and shall have confirmed that each is in form and substance satisfactory to it before any disbursement is made;
- (vi) the representations and warranties declared by the Grantee are true and correct on and as of each such time as if each was made with respect to the facts and circumstances at such time; and
- (vii) that no event or circumstance which constitutes or which the giving of notice or

lapse of time or both would constitute an event of default and/or a breach (as specified in this Agreement) shall have occurred and be continuing or would result from the disbursement of the Grant Funds.

## **8.2 Disbursement subject to availability of funds**

- (i) The Grantee acknowledges that EUSMS is donor funded and therefore that the availability of funds shall at all times be subject to the conditions set by EUSMS's donors, which conditions may change from time to time.
- (ii) The Grantee further acknowledges that EUSMS receives donor funding in different currencies and therefore that EUSMS's total financial commitment under this Agreement which is provided in a € amount specified in the Grant Award Letter and approved budget, shall be adjusted to reflect ongoing changes in exchange rates. For the avoidance of doubt, the Grantee accepts to adopt all necessary measures to mitigate and/ or absorb any shortfall which arises from foreign exchange losses as part of its contribution to the project.
- (iii) Without prejudice to the provisions of this clause, the disbursements of the Grant funds shall at all times be subject to the availability of funds as may be determined by EUSMS at its sole discretion and also conditional upon the compliance by EUSMS with any and all restrictions, rules and regulations put in force by any relevant regulatory authority.

## **8.3 Disbursement Requests**

- (i) Disbursements shall only be made against an original written disbursement request, from the Grantee. The disbursement request shall be in such form and contain such substance as EUSMS shall reasonably request. EUSMS shall pay the amounts requested by the Grantee only to and on the order of the Grantee.
- (ii) The disbursement request must be signed by the Grantee's authorized signatory. The Grantee shall furnish EUSMS with supporting documentation that the authority of the person or persons authorized to sign each application and the authenticated specimen signature of each such person; and such documents and other evidence in support of each application as EUSMS shall specify, whether before or after EUSMS has permitted any disbursement requested in the application.
- (iii) EUSMS may in its reasonable discretion modify payment dates or amounts and will notify the Grantee of any such changes in writing.

## **9 DESIGNATED ACCOUNTS**

The Grantee shall open and maintain one or more accounts, designated for Grant Funds, into which EUSMS may, at the request of the Grantee, deposit grant funds. All Designated Accounts shall be opened in a financial institution acceptable to EUSMS, and on terms and

conditions acceptable to EUSMS.

## **10 OVERPAYMENTS**

Any Grant Funds advanced or paid to the Grantee and not needed for approved grant purposes, or additional to the requirements of the Project Activities, shall be reported immediately by the Grantee to EUSMS. Grantees are to submit payments, including refunds or reimbursements, directly to EUSMS's bank account, unless agreed otherwise by EUSMS in writing.

The amounts to be repaid under this clause may be deducted by EUSMS from subsequent disbursements of the Grant Funds.

## **11 GRANT REPAYMENT**

11.1 If EUSMS determines that an amount of the Grant Funds has been used in a manner inconsistent with the provisions of this Agreement, the Grantee shall, upon notice by EUSMS to the Grantee, promptly refund such amount to EUSMS. Such inconsistent use shall include, without limitation:

- (i) use of such amount to make a payment for an expenditure that is not an eligible expense; or
- (ii) engaging in corrupt, fraudulent, collusive or coercive practices in connection with the use of such amount; or
- (iii) use of such amount to finance a contract during the procurement or execution of which corrupt and/or unethical practices were engaged in by representatives of the Grantee, in either case without the Grantee having taken timely and appropriate action satisfactory to EUSMS to address such corrupt and/or unethical practices when they occur.

11.2 The amounts to be repaid under clause 11.1 may be deducted by EUSMS from subsequent disbursements of the grant funds.

## **12 ALLOWABLE COSTS**

12.1 The Grantee shall utilize the Grants Funds in accordance with the terms of this Agreement and the approved project budget.

12.2 It is the Grantee's responsibility to ensure that all expenses incurred in carrying out the project activities are incurred in accordance with the applicable cost principles, meaning the costs are:

- (i) reasonable: costs which are generally recognized as ordinary and necessary and would be incurred by a prudent person in the conduct of normal business;

(ii) allocable: incurred specifically for the project activities envisaged under this Agreement; and

(iii) allowable: conform to any limitations in this Agreement.

12.3 The Grantee must obtain EUSMS's written determination on whether specific costs not clearly addressed in the applicable cost principles are allowable or allocable.

12.4 EUSMS reserves the right to make a final determination on the allowability of costs.

### **13 REALLOCATION OF FUNDS**

If, in EUSMS's opinion, an amount of the Grant Funds allocated to a category of Eligible Expenditures under this Agreement will be insufficient to finance the expenditures under such category, EUSMS may, by notice to the Grantee:

(i) Reallocate to such category any other amount of the Grant which in EUSMS's opinion is not needed for other eligible expenses, to the extent required to meet the estimated shortfall; and

(ii) If such reallocation will not fully meet the estimated shortfall, reduce the percentage of eligible expenses to be financed under such category, in order that further withdrawals for such expenditures may continue until all such expenditures have been made.

### **14 ASSIGNMENT & SUBCONTRACTING**

14.1 The Grantee may not assign or delegate any rights or obligations hereunder without first obtaining the written consent of EUSMS.

14.2 An assignment of this Agreement by operation of law, as a result of a merger, consolidation, amalgamation, or other transaction or series of transactions, requires the written consent of EUSMS to the same extent as an assignment under 14.1.

14.3 The Grantee shall ensure that every consultant and every contractor it engages or contracts under the Grant complies with the terms of this Agreement, as though the consultant or contractor were a party to this Agreement.

14.4 The Grantee agrees to assume responsibility for its subcontractors and/ or consultants and breach of the terms and conditions of this Agreement as if the subcontractors acts and omissions were the Grantee's own.

14.5 The Grantee is the responsible authority, without recourse to EUSMS, regarding settlement and satisfaction of all contractual and administrative issues arising out of procurement entered into in support of the Project Activities.

14.6 The Grantee agrees to make available to EUSMS the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

## **15 PROCUREMENT OF GOODS AND SERVICES BY THE GRANTEE**

15.1 All goods, works and services required pursuant to this Agreement and to be financed out of the proceeds of the Grant Funds shall be procured in an open and transparent manner and reflect value for money.

15.2 Where EUSMS deems appropriate, the Grantee shall be required to prepare and submit a procurement plan for EUSMS's approval.

15.3 EUSMS shall terminate this Agreement if it is established that any contract financed out of the proceeds of the Grant Funds was procured without regard for due process and best procurement practices.

## **16 ACCOUNTING, AUDIT AND RECORDS**

### **16.1 Records and Accounting:**

- (i) The Grantee shall establish and maintain a reasonable accounting system, based on internationally acceptable standards, that enables EUSMS to readily identify the Grantee's assets, expenses, costs of goods, and use of funds.
- (ii) EUSMS and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Grantee, including, but not limited to those kept by the Grantee, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.
- (iii) The Grantee shall, at all times during the term of this Agreement and for a period of five (5) years after the date of submission of the final expenditure report under this Agreement, maintain such records, together with such supporting or underlying documents and materials.

### **16.2 Audits:**

### **16.2.1 Institutional Audits**

The Grantee must ensure that they are audited annually by an external, independent and qualified auditor acceptable to EUSMS, in accordance with internationally accepted standards.

### **16.2.2 Special Audits**

- (i) EUSMS reserves the right, on its own, or through an agent, to perform an audit, conduct a financial review, forensic audit and /or evaluation on all EUSMS-funded project activities under this Agreement.
- (ii) EUSMS may require that the Grantee's Project Activities are audited by an external, independent and qualified auditor, acceptable to EUSMS, under specific terms of engagement which shall be determined by EUSMS.
- (iii) Costs of any such audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by EUSMS unless the following exemption criteria are met:
  - If the audit identifies overpricing or overcharges (of any nature) by the Grantee to EUSMS in excess of one percent (1%) of the total billings, the Grantee shall reimburse EUSMS for the total costs of the audit.
  - If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, EUSMS may recoup the costs of the audit work from the Grantee.
- (iv) Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Grantee's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of EUSMS's findings to the Grantee

### **16.2.3 Audit Reports:**

- (i) The audit reports, which shall include the audited financial statements and the Management Letter, must be submitted to EUSMS within 3 months after receipt of the auditor's report. The audit report shall express the auditor's opinion on whether the submitted annual financial report is compliant with the Grantee's accounting records and international financial reporting standards and whether the Grantee has complied with the requirements of this Agreement.
- (ii) The auditor shall submit a Management Letter/Audit Memorandum, which shall contain the audit findings made during the audit process and shall also state which measures have been taken as a result of previous audit and whether measures taken have been adequate to deal with reported shortcomings.
- (iii) In cases of continued inability or unwillingness to have an audit performed in accordance with the terms of this provisions, EUSMS will consider appropriate sanctions which may include suspension of all, or a percentage of the

disbursements until the audit is satisfactorily completed.

- (iv) The Grantee shall co-operate with and assist EUSMS in the performance of any additional audits, follow-ups and financial studies that EUSMS may request.
- (v) The Grantee agrees to promptly resolve any audit issues raised by EUSMS and/or any auditor in accordance with EUSMS's and/or the auditors recommendations and in particular:
  - any issues regarding disallowed or questioned costs must be adequately responded to or resolved within thirty (30) days of receipt of the auditor's final report
  - any other issues raised in the audit report must be resolved within the timeframe specified by the auditor or EUSMS as the case may be.
- (vi) EUSMS reserves the right to conduct an audit of the Grantee either directly or through an independent auditor designated by EUSMS.

## **17 ACCESS TO PREMISES AND RECORDS**

17.1 The Grantee shall at all reasonable times, grant EUSMS and its authorized representatives:

- (i) unhindered access to: - (a) the Grantee's personnel; (b) premises occupied by the Grantee; (c) the assets and material; (d) all accounts, records and documents in relation the Project Activities and Grant Funds and its administration; and
- (ii) reasonable assistance to: (a) inspect the performance of the Project Activities; (b) locate and inspect any accounts, records and documents in relation to the Project Activities; (c) locate and inspect the assets and material; (d) make copies of any accounts, records and documents in relation to the Project Activities and remove those copies; and (e) make copies of material (where applicable) and remove those copies.

17.2 The access rights in Clause 17.1 are subject to: - (a) the provision of reasonable prior notice by EUSMS; and (b) the applicable Grantee's reasonable security procedures.

17.3 In the event that EUSMS is investigating a matter which, in its opinion, may involve an actual or suspected unethical conduct, or breach of the law or breach of the terms of this Agreement, Clause 17.2 (a) will not apply.

17.4 Upon receipt of reasonable written notice from EUSMS, the Grantee shall provide any information relating to the Project Activities and this Agreement required by EUSMS for audit or monitoring and evaluation purposes.

## **18 EVENTS OF DEFAULT & REMEDIES**

## 18.1 Events of Default

"Event of Default" shall mean the occurrence or existence of any one or more of the following:

- 18.1.1 a breach by the Grantee in the performance of its obligations, covenants or undertakings under this Agreement including but not limited to non-compliance to the EUSMS's reporting requirements;
- 18.1.2 any representation or warranty made, or any information provided by the Grantee in connection with this Agreement, or any representation or statement furnished by the Grantee and intended to be relied upon by EUSMS, being false, incorrect or misleading in any material respect, when made or repeated or provided;
- (i) the cessation or revocation for any reason of any consent, authorization, licence and/or exemption which is required to enable the Grantee carry on all or any material part of the Project Activities, or to ensure that the terms of this Agreement are valid, binding and enforceable, or it becoming unlawful for a Grantee to perform all or any of its obligations hereunder or thereunder on any such document not being or ceasing to be legal, valid and binding on it;
  - (ii) Beneficial ownership of the Grantee passing or having passed to any person (s), acting either individually or in concert, who did not have beneficial ownership of the Grantee at the date of the commencement of the Funding Agreement, without the prior written consent of EUSMS;
  - (iii) financial irregularities or fraud committed by the Grantee;
  - (iv) failure of the Grantee to execute further documentation required by EUSMS or the provision of falsified documentation;
  - (v) the Grantee committing any act of bankruptcy or insolvency;
  - (vi) the occurrence of any action taken for the dissolution, disestablishment or suspension of operations of the Grantee (or of any other entity responsible for implementing any part of the Project);
  - (vii) failure by the Grantee to afford a reasonable opportunity for representatives of EUSMS to visit any part of the Project supported by the Grant Funds;
  - (viii) where EUSMS determines that any representative of the Grantee has engaged in corrupt, fraudulent, coercive or collusive practices in connection with the use of the proceeds of the Grant, without the Grantee having taken timely and appropriate action;
  - (ix) the Grantee (or any other entity responsible for implementing any part of the Project) has ceased to exist in the same legal form as that prevailing as of the date of the Grant Agreement;

- (x) Failure to communicate to EUSMS within reasonable time substantive change of critical personnel in the project or substantive change in time allocation by such personnel;
- (xi) In the opinion of EUSMS, the legal character, ownership or control of the Grantee (or of any other entity responsible for implementing any part of the Project) has changed from that prevailing as of the date of this Agreement so as to materially and adversely affect the ability of the Grantee (or such other entity) to perform any of its obligations arising under or entered into pursuant to the Grant Agreement, or to achieve the objectives of the Project;
- (xii) Grantee has failed to implement in full or in part recommendations made by EUSMS's external or internal auditors;
- (xiii) where the Grantee has, without the consent of EUSMS:
  - (a) assigned or transferred, in whole or in part, any of its obligations arising under or entered into pursuant to this Agreement; or
  - (b) sold, leased, transferred, assigned, or otherwise disposed of any property or assets financed wholly or in part out of the proceeds of this Agreement; provided, however, that the provisions of this paragraph shall not apply with respect to transactions in the ordinary course of business which, in the opinion of EUSMS do not materially and adversely affect the ability of the Grantee to perform any of its obligations arising under or entered into pursuant to the Grant Agreement or to achieve the objectives of the Project.

## **18.2 Remedies.**

Upon the occurrence of any event of default, EUSMS may:

18.2.1 terminate this Agreement and its commitment to advance the Grant Funds; or

18.2.2 require the immediate repayment of the whole or any portion of the Grant Funds already disbursed under the Agreement within 30 days of receipt of a demand notice from EUSMS; or

18.2.3 suspend or terminate the right of the Grantee to receive any undisbursed Grant Funds at any time by written notice to the Grantee. Such suspension shall continue until EUSMS has notified the Grantee that such right to receive Grant Funds has been restored; or

18.2.4 not consider the Grantee for any other grant awards by EUSMS; and/or

18.2.5 exercise any of its rights and remedies under any of the documents referred to in this Agreement.

## **19 ANTI-CORRUPTION & BRIBERY**

- 19.1 EUSMS and the Grantee agree on cooperating to counteract corruption and bribery during the implementation of the Project Activities.
- 19.2 The Grantee undertakes to investigate and, if necessary, take action, including legal measures, against any person or persons whom there is good reason to suspect of corruption or other improper gain in relation to the Project.
- 19.3 The Grantee shall immediately inform EUSMS of any illegal or corrupt practice or any other misuse of the Grant Funds that the Grantee is aware of or that has been brought to its attention.
- 19.4 The Grantee declares and guarantees that no offer, gift or payment, consideration or benefit of any kind, which constitutes an illegal or corrupt practice, has been or will be made to anyone by the Grantee, either directly or indirectly, as an inducement or reward for the award or execution of this Agreement.
- 19.5 The Grantee declares and guarantees that neither the Grantee, nor its Employees involved in this project:
- (i) were convicted during a period of three (3) years prior to the submission of the initiative proposal, by a court of law in Kenya or in any other jurisdiction for an offence involving bribery or corruption; or
  - (ii) are under sanction, for an offence involving bribery or corruption, imposed by a government, a governmental organization or a development organization providing development assistance.

## **20 COOPERATION AND CONSULTATION**

The Grantee and EUSMS shall cooperate fully to ensure that the purposes of this Agreement and the objectives of the Project Activities will be accomplished, and to this end, throughout the implementation of the Project and for a period of five years thereafter:

- (i) from time to time, at the request of either of them, exchange views on the Project, the Grant, and the performance of their respective obligations under this Agreement, and furnish to the other Party all such information related to such matters as it shall reasonably request; and
- (ii) Promptly inform the other Party of any condition which interferes with, or threatens to interfere with, such matters.

## **21 DISPUTE RESOLUTION**

21.1 For purposes of this Agreement, “dispute” means a disagreement arising out of or in

connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it and includes any failure to reach agreement where an agreement is required.

21.2 The Parties shall make all reasonable efforts to resolve a dispute by amicable negotiations and agree to provide, on a “without prejudice” basis, frank, candid and timely disclosure of relevant facts, information, and documents to facilitate these negotiations.

21.3 Disputes, if any, shall be resolved as follows: -

- (i) By amicable settlement by the Parties or failing that;
- (ii) By a court of competent jurisdiction.

21.4 The Parties hereby agree to carry out their respective responsibilities to clear the dispute within the set deadline and each party agrees to bear the consequences of default or non-compliance.

## **22 INSURANCE**

The Grantee shall ensure that adequate provision is made to have appropriate insurances in place for the Project Activities and to be financed out of the proceeds of the Grant Funds, against hazards incident to the acquisition, transportation and delivery of the goods to the place of their use and during the course of performance of the Project

## **23 CONFLICT OF INTEREST**

The Grantee agrees to notify EUSMS promptly of any actual, perceived or potential conflicts of interest which could affect its performance of this Agreement and agrees to take action to resolve the conflict.

The Grantee must have written policies and procedures in place to prevent personal conflicts of interest and to prevent their officers, employees, affiliates, partners or agents from using their positions for personal gain or presenting the appearance of a personal conflict of interest. A personal conflict of interest is a situation in which an officer, employee, affiliate, partner or agent of the Grantee has a financial interest, personal activity, or relationship that could impair their said ability to act impartially when performing under the Grant. The Grantee's written policy must state that an employee, officer, affiliate, partner or collaborator of the Grantee, or any member of their immediate family cannot have a financial or other interest in the entity selected for collaboration without the approval of EUSMS. In addition, the written policy must state that the officers, employees, collaborators and agents of the Grantee must neither solicit nor accept gratuities, favours, or anything of monetary value from each other.

## 24 PROHIBITED ACTIVITIES

- 24.1 **Duplication of Work:** The purpose and scope of Project Activities for which this Agreement is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public or private. Upon request of EUSMS, the Grantee shall submit full information about related programs that will be initiated within the Grant Period.
- 24.2 **Other Funding Sources:** Grant Funds budgeted or granted for this Project shall not be used to replace any financial support previously provided or assured from any other source.
- 24.3 **Lobbying:** The Grantee is prohibited from using Grant Funds or personnel employed in the administration of this project for political activities, sectarian or religious activities, lobbying, political patronage or nepotism activities.
- 24.4 **Marketing/Entertainment:** Grant Funds may not be used for marketing or entertainment expenses.
- 24.5 **Procurement of Capital Assets:** Grant Funds may not be used for capital assets, such as the purchase of vehicles, improvements and renovation of space and repair and maintenance of privately owned vehicles without the express written approval of EUSMS.

## 25 DISPOSAL OF CAPITAL ASSETS

- 25.1 The Grantee shall dispose of all Capital Assets acquired for the purpose of the Project activities, which have an estimated lifespan greater than one year at the time of acquisition or disposal at the end of the Agreement at the latest, in one of the methods of disposal provided herein. The transfer shall at times be subject to the approval of EUSMS.
- 25.2 The transfer of ownership of Capital Assets shall be to the beneficiaries designated in the inventory list mentioned below:
- (i) transfer of assets to an organization approved by EUSMS prior to the transfer;
  - (ii) if warranted, any other alternate disposition as approved by EUSMS.

## 26 WAIVER OF RIGHTS

- 26.1 No delay in exercising, or omission to exercise, any right, power or remedy accruing to any Party under this Agreement upon any default, shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default.
- 26.2 No action of such Party in respect of any default, or any acquiescence by it in any

default, shall affect or impair any right, power or remedy of such Party in respect of any other or subsequent default.

## **27 VARIATION**

27.1 EUSMS reserves the right to amend the terms of the Grant Award Letter, these Standard Terms & Conditions and EUSMS's Policies and Position Statements at any time.

27.2 Any changes to these Standard Terms & Conditions or EUSMS's Policies and Position Statements shall be published on our website or sent to the Grantee via email or post. Once published, any changes will apply to this Agreement.

27.3 Any amendments to the Grant Award Letter shall be communicated to the Grantee in writing.

## **28 NOTICES AND REQUESTS**

28.1 Any notice (or request) pursuant to this Agreement shall be in writing, signed by the Party giving notice and addressed to the other Party's representative.

28.2 All notices required or permitted to be given under this Agreement shall be given in English and sent by mail, electronic mail or delivered by hand to the addresses provided by the Parties to this Agreement in writing.

28.3 All communications shall: (a) when mailed, be effective three business days after deposit in the mails; and (b) when sent for next day delivery by a reputable overnight courier service, be effective one business day after dispatch.

28.4 The Parties agree to notify the other Party of anything reasonable likely to affect the performance of the project in a timely manner.

## **29 COMPLIANCE WITH EUSMS'S POLICIES**

The Grantee agrees to comply with the EUSMS policies which are available on EUSMS's website and which shall be communicated by EUSMS as applicable.

## **30 ANTI-TERRORISM**

30.1 Grantee hereby certifies that it operates in compliance with the laws of its country of domicile and confirm that it does not support or conduct, directly or indirectly, any terrorist activities or violence of any kind. The Grantee further certifies that it shall take reasonable steps to ensure that staff, board and other employees have no dealings

whatsoever with terrorists or terrorist organizations and do not support, directly or indirectly, terrorist activities or violence of any kind.

30.2 If, as a part of this Project, any funds are to be disbursed to any specific individuals or organizations, you agree to check the names of such individuals or organizations against the United States Department of Treasury, Office of Foreign Assets Control (“OFAC”) list of “Specially Designated Nationals” maintained on OFAC’s website at <https://www.treasury.gov/ofac/downloads/sdnlist.pdf> prior to disbursement. Re-granting of funds to any individual or organization that appears on this list is strictly prohibited.

## **31 ANTI-MONEY LAUNDERING & COUNTERING TERRORIST FINANCING**

31.1. **General Principle:** The Grantee shall use reasonable efforts to ensure that the Grant Funds are not used to support or promote violence, to aid terrorists or terrorist related activity, to conduct money-laundering activities or to fund organizations or individuals known to support terrorism or that are involved in money-laundering activities.

31.2 **Requirements:** For each project, the Grantee acknowledges and agrees, that, consistent with EUSMS’s commitment to prevent money-laundering activities and counter terrorist-financing:

- (i) any transaction to effect the transfer, disbursement, payment or exchange of Grant Funds (including wire transfers and currency exchanges) shall be carried out through the bank account into which Grant Funds are disbursed, unless otherwise authorized in writing by EUSMS prior to such transaction;
- (ii) all transactions involving Grant Funds that are effected through electronic wire transfer or currency exchange shall be duly recorded in accordance with relevant auditing requirements;
- (iii) all currency exchanges involving Grant Funds shall be carried out through established and regulated financial institutions. For the avoidance of doubt, currency exchange operations which are not carried out through established and regulated financial institutions shall not be regarded as being undertaken for the Project purposes; and
- (iv) any transfer, disbursement, transmission, payment, or exchange of Grant Funds, by any means, (i) to third parties not directly related to the implementation of the Project and the related Grant Agreement, or (ii) for any

activities that are not project activities is strictly prohibited.

**31.3 Remedies and Responsibilities:** The Grantee acknowledges and agrees, that EUSMS may exercise its right to terminate or apply restrictions to this Agreement upon the occurrence of any transaction involving Grant Funds, that contravenes the provisions under this clause (any such transaction, an “Unauthorized Transaction”), and that the Grantee shall bear the sole and ultimate responsibility, financial and otherwise, for any losses resulting from any such transaction referred to above and shall reimburse EUSMS for the amount of any losses or gains resulting from Unauthorized Transactions.

#### **31.4 Debarment and Suspension**

The Grantee must not transact or conduct business under this award with any individual or entity that has an active exclusion on the System for Award Management (SAM) (<https://www.sam.gov/portal>)

#### **31.5 Terrorist Financing**

The Grantee must not engage in transactions with, or provide resources or support to, individuals and organizations associated with terrorism including those individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury ((online at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf> ) or the United Nations Security designation list (online at: <https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/consolidated.xsl> or the United Nations Security designation list (online at: [http://www.un.org/sc/committees/1267/aq\\_sanctions\\_list.shtml](http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml))).

### **32 WHISTLEBLOWER POLICY**

- (i) We encourage our Partners to report possible violations and breach of our policies at the earliest opportunity and in utmost good faith through our whistleblower email address XXXXXXXXXXXX.
- (ii) EUSMS further commits that all whistleblower reports received are investigated in a professional manner and the whistleblowers (anonymous or otherwise) are protected against retaliation as governed by the policy and applicable laws

### **33 SEXUAL HARASSMENT POLICY**

EUSMS is committed to providing a work environment that is free from any form of harassment including sexual harassment. EUSMS applies a zero tolerance policy against any verbal or physical conduct by any employee either on or off premises that harasses, disrupts, or interferes with another employee’s work performance or that creates an intimidating, offensive, or a hostile environment or which intimidates any third parties that EUSMS deals with. No form of inappropriate sexual conduct will be tolerated or condoned.

If you see or hear an incident of sexual harassment or are subjected to an offensive

environment, please make a confidential report of the matter in writing to EUSMS through our whistleblower email address XXXXXXXXXXXXX.

The Grantee shall further have in place and maintain a system to guard against sexual harassment and shall take prompt and appropriate measures to demonstrate that sexual harassment will not be tolerated by any of its employees, agents or representatives.

**34 TERMINATION**

**34.1 Termination following effluxion of time**

Unless earlier terminated in accordance with this Agreement or if EUSMS agrees in writing to an extension of time, this Agreement shall end upon the expiry of the Term provided in the Grant Award Letter. Unless otherwise specifically provided in the Grant Award Letter, any application for extension of time shall be made to EUSMS no later than six (6) months before the end of the Term.

**34.2 Termination for Default**

34.2.1 EUSMS may terminate or suspend this Agreement with immediate effect and without notice upon the occurrence of an event of default, as defined in this Agreement.

34.2.2 In the event of termination of this Agreement under this clause, EUSMS shall not be obliged to cover any expenses incurred by Grantee in relation to project activities up to the date of suspension or termination which have not been covered by disbursements of Grant Funds already disbursed by EUSMS.

34.2.3 Upon termination of this Agreement under this clause, the Grantee shall take all necessary actions to minimise further expenditure on project activities and account to EUSMS for all disbursed Grant Funds which were disbursed to the Grantee.

34.2.4 The Grantee will not be entitled to compensation for any losses incurred as a result of termination under this clause.

**34.3 Termination for Convenience**

34.3.1 EUSMS shall be entitled to suspend or terminate this Agreement without cause by giving thirty (30) days' written notice to the Grantee. The Grantee hereby agrees that they are not entitled to make any claim or challenge against EUSMS in respect of such suspension or termination and undertake not to challenge or contest in any way (including by way of legal proceedings or public communications), EUSMS's right to effect such suspension or termination.

34.3.2 The Grantee agrees on receipts of a notice of termination for convenience, to:

- (i) stop the performance of the its obligations as specified in the notice;
- (ii) take all available steps to minimize loss resulting from the termination.

34.3.3 In the event of termination of this Agreement under this clause, EUSMS shall only reimburse the Grantee any reasonable expenses the Grantee unavoidably incurs that relate directly to the termination. EUSMS's liability to pay any amount under this clause shall at all times be subject to the Grantee's compliance with this Agreement and the availability of funds.

34.3.4 The Grantee will not be entitled to compensation for any losses incurred as a result of termination under this clause.

## **35 PUBLIC RECOGNITION**

**35.1 Announcement:** The Grantee shall not make any initial public announcement relating to this Agreement or to any of the information in the documents attached hereto without first providing EUSMS sixty (60) days advance notice and obtaining EUSMS's written approval. In exceptional circumstances, EUSMS may, as its sole discretion, consent to an advance notice period that is less than sixty (60) days.

EUSMS will include information on this Grant in our periodic public reports and may make information about this grant public at any time on our website and as part of press releases, public reports, speeches, newsletters, and other public documents. If the Grantee wishes to issue a press release or report announcing this Grant, or otherwise use EUSMS's name or logo, please contact Kerim Bilgic, EUSMS's Chief Executive Officer ([kb@eusms.org](mailto:kb@eusms.org)) at least two weeks before the desired announcement or publication date. The Grantee agrees to obtain advance approval from EUSMS of the press release and the date of release, or of any other use of EUSMS's name or logo. EUSMS requests an opportunity to review and comment on subsequent press releases or reports that are directly related to the Grant.

**35.2 Approval of Material:** All content directly related to this Agreement that will be used in any public activity must be approved by EUSMS and will contain appropriate acknowledgments of the contribution of both EUSMS and the Grantee. EUSMS's name shall not be used in such a way that EUSMS can be regarded as having contributed to or vouching for the content.

**35.3 Acknowledgment of Contribution:** The Grantee shall acknowledge EUSMS's contribution in the following manner:

- (a) By clearly and prominently identifying EUSMS's contribution to the public, using all promotional told provided by EUSMS and wording satisfactory to EUSMS; and
- (b) By acknowledging the contribution of EUSMS in any public reference to the Project

Activities such as but not limited to announcements, interviews, speeches, press releases, publications, signage, websites, advertising and promotional material and advertising.

### **36 PUBLICATION, PUBLIC ACCESS AND LICENSE TO USE**

The Grantee shall make the results of the Project, written reports, other publications, and any materials of any nature created by the organization regarding the Project as a result of or in connection to this grant (collectively, the “Materials”) available to the public (i) on hard copy media free of charge (other than reasonable processing and shipping costs), and/or (ii) for free unlimited access on a Creative Commons Attribution 4.0 Generic License or an equivalent license and use via an Internet site, which The Grantee shall use reasonable efforts to have listed with major Internet search engines. One copy (electronic or hard copy) of each of the Materials must accompany the annual or final progress report submitted to EUSMS for the period in which such Materials were created. Any software created by the organization regarding the Project as a result of or in connection to this grant will be made available to the public on an open source basis.

### **37 PRIVACY AND DATA PROTECTION**

The Grantee shall perform its obligations in such a way as to protect the personal information of individuals and shall comply with all applicable laws relating to privacy and data protection and the collection and use of personal information which the Grantee may collect and hold for use during the Project. In addition, the Grantee will comply where required with the provisions of the EU General Data Protection Regulation (GDPR) and the Kenyan Data Protection Act 2019 (DPA).

The Grantee shall ensure that it has received all the necessary consents to enable it share collected data with EUSMS to enable EUSMS to monitor the implementation of the Project and share it with third parties. EUSMS further reserves the right to transfer (including for the purposes of publication) information about the Project to other third parties.

### **38. FORCE MAJEURE.**

Neither Party will be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure is caused by pandemics, fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction (in whole or in part) of machinery or equipment or failure of supply of materials, discontinuity in the supply of power, governmental restrictions or interference, civil commotion, riot, terrorism, war, strikes, labor disturbance, transportation difficulties, labor shortage or a similar cause beyond the party’s reasonable control. Notwithstanding the foregoing, if an act of force majeure causes a party to be unable to perform for more than 60 consecutive days, the other party may terminate this Agreement upon 10 days’ written notice.

### **39 SURVIVAL**

If EUSMS suspends or terminates this Agreement, the rights and remedies available to it

shall survive the suspension or termination.

#### **40. ILLEGALITY & SEVERABILITY**

If performance of any Obligation under this Agreement would require the performing party to violate the Law, then the performance shall be reduced to the level permitted by Law, and if any provision of this Agreement is determined to be illegal or invalid by a court of competent jurisdiction, then such provision only shall be void as though not set forth in this Agreement, and the remainder of this Agreement shall remain in full force and effect.

#### **41 HEADINGS**

The headings used in this Agreement are for convenience only and do not constitute a part of this Agreement.

#### **42 DISCLAIMER OF RELATIONSHIPS.**

The Grantee acknowledges that the obligation of EUSMS is limited to making the Grant on the terms set forth in this Agreement. Nothing in this Agreement, and no act of the parties or any one or more of them, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Grantor and the Grantee.