



**EUROPEAN COMMISSION**  
Executive Agency for Small and Medium-sized Enterprises  
(EASME)  
Director



## GRANT AGREEMENT

**NUMBER — 689157 — FORCE**

This **Agreement** ('the Agreement') is **between** the following parties:

**on the one part,**

*the Executive Agency for Small and Medium-sized Enterprises (EASME) ('the Agency'), under the power delegated by the European Commission ('the Commission')<sup>1</sup>,*

represented for the purposes of signature of this Agreement by Head of Unit, Executive Agency for Small and Medium-sized Enterprises (EASME), OPERATIONS, H2020 Environment & Resources, Arnoldas MILUKAS,

**and**

**on the other part,**

1. 'the coordinator':

**KOBENHAVNS KOMMUNE (CPH)**, 64942212, established in OTTILIAVEJ 1, VALBY 2500, Denmark, DK17544543, represented for the purposes of signing the Agreement by Hans Christian CHRISTIANSEN

and the following other beneficiaries, if they sign their 'Accession Form' (see Annex 3 and Article 56):

2. **FREIE UND HANSESTADT HAMBURG (FHH)**, N/A, established in RATHAUSMARKT 1, HAMBURG 20095, Germany, DE118509725,

3. **CAMARA MUNICIPAL DE LISBOA (LIS)**, 500051070, established in PACOS DO CONCELHO PRACA DO MUNICIPIO, LISBOA 1100-365, Portugal, PT500051070,

4. **COMUNE DI GENOVA (CDG) EPE**, CF00856930102, established in VIA GARIBALDI 9, GENOVA 16124, Italy, IT00856930102,

5. **AAGE VESTERGAARD LARSEN A/S (AVL) AS**, 34228914, established in KLOSTERMARKEN 3, MARIAGER 9550, Denmark, DK34228914,

6. **TEKNOLOGISK INSTITUT (DTI) DK1**, 56976116, established in GREGERSENSVEJ 1, TAASTRUP 2630, Denmark, DK56976116,

7. **LETBAEK PLAST AS (Letbæk) AS**, 24257134, established in HORNEVEJ 18, TISTRUP 6862, Denmark, DK24257134,

8. **DANSK ROTATIONS PLASTIC APS (DRP) APS**, 35021310, established in KALVEHAVE HAVNEVEJ 3, KALVEHAVE 4771, Denmark, DK35021310,

9. **STADTREINIGUNG HAMBURG AOR (SRH)**, HRA118369, established in BULLERDEICH 19, HAMBURG 20537, Germany, DE811657326,

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<sup>1</sup> Text in *italics* shows the options of the Model Grant Agreement that are applicable to this Agreement.

10. **HAFENCITY UNIVERSITAT HAMBURG (HCU)**, NONE, established in UBERSEEALLEE 16, HAMBURG 20457, Germany, DE256502509,
11. **HOCHSCHULE FUER ANGEWANDTE WISSENSCHAFTEN (HAW)**, HmbGVBl. Nr. 26, established in BERLINER TOR 5, HAMBURG 20099, Germany, DE246571598,
12. **CONSIST ITU ENVIRONMENTAL SOFTWARE GMBH (Consist) GMBH**, HRB 59503, established in JAKOBKIRCHHOF 8, Hamburg 20095, Germany, DE173527533,
13. **AURUBIS AG (Aurubis) AG**, HRB1775, established in HOVESTASSE 50, HAMBURG 20539, Germany, DE118514155,
14. **VALORSUL - VALORIZACAO E TRATAMENTO DE RESIDUOS SOLIDOS DAS REGIOES DE LISSBOA E DO OESTE S.A. (Valorsul) SA**, 509479600, established in PLATAFORMA RIBEIRINHA DA CP ESTACAO DE MERCADORIAS DA BOBADELA, LOURES 2695 709, Portugal, PT509479600,
15. **DARIACORDAR ASSOCIACAO PARA A RECUPERACAO DE DESPERDICIO (Dariacordar) PT16**, 509735703, established in RUA ADRIANO CORREIA DE OLIVEIRA 4A OEIRAS, LISBOA 1600 312, Portugal, PT509735703,
16. **Quercus - Associação nacional de Conservação da natureza (Quercus) PT16**, 501736492, established in CENTRO ASSOCIATIVO DO CALHAU BAIRRO DO CALHAU, LISBOA 1500 045, Portugal, PT501736492,
17. **ASSOCIACAO DA HOTELARIA RESTAURACAO E SIMILARES DE PORTUGAL (AHRESP) PT16**, 503767514, established in AV DUQUE DE AVILA 75, LISBOA 1049 011, Portugal, PT503767514,
18. **AMIU GENOVA SPA (Amiu) SPA**, GE-355781, established in VIA GABRIELE ANNUNZIO 27, GENOVA 16121, Italy, IT03818890109,
19. **ECOLEGNO GENOVA SRL (Ecolegno) SRL**, GE-371612, established in VIA N. LORENZI 25, GENOVA 16152, Italy, IT03704090103,
20. **TECNOLOGIE INNOVATIVE PER IL CONTROLLO AMBIENTALE E LO SVILUPPO SOSTENIBILE SCRL (TICASS) SCRL**, 447699CF01955020993, established in VIA BARTOLOMEO BOSCO 57/4, GENOVA 16121, Italy, IT01955020993,
21. **ACTIVE CELLS SRL (Active Cells) SRL**, 456187, established in VIA DEI REGGIO 2, GENOVA 16155, Italy, IT02054970997,
22. **ADDAPTCREATIVE LDA (Addapt) LDA**, 508740975, established in RUA DAS FAIAS 13 ATELIER, MEM MARTINS 2725 305, Portugal, PT508740975,

Unless otherwise specified, references to ‘beneficiary’ or ‘beneficiaries’ include the coordinator.

The parties referred to above have agreed to enter into the Agreement under the terms and conditions below.

By signing the Agreement or the Accession Form, the beneficiaries accept the grant and agree to implement it under their own responsibility and in accordance with the Agreement, with all the obligations and conditions it sets out.

The Agreement is composed of:

Terms and Conditions

- Annex 1 Description of the action
- Annex 2 Estimated budget for the action
- Annex 3 Accession Forms
- Annex 4 Model for the financial statements
- Annex 5 Model for the certificate on the financial statements
- Annex 6 Model for the certificate on the methodology

# TERMS AND CONDITIONS

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## **CHAPTER 1 GENERAL**

### **ARTICLE 1 — SUBJECT OF THE AGREEMENT**

This Agreement sets out the rights and obligations and the terms and conditions applicable to the grant awarded to the beneficiaries for implementing the action set out in Chapter 2.

## **CHAPTER 2 ACTION**

### **ARTICLE 2 — ACTION TO BE IMPLEMENTED**

The grant is awarded for the action entitled ‘*Cities Cooperating for Circular Economy — FORCE*’ (**‘action’**), as described in Annex 1.

### **ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION**

The duration of the action will be **48 months** as of *1 September 2016* (**‘starting date of the action’**).

### **ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS**

#### **4.1 Estimated budget**

The **‘estimated budget’** for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary (*and linked third party*) and budget category (see Articles 5, 6, and 14).

#### **4.2 Budget transfers**

The estimated budget breakdown indicated in Annex 2 may be adjusted by transfers of amounts between beneficiaries or between budget categories (or both). This does not require an amendment according to Article 55, if the action is implemented as described in Annex 1.

However, the beneficiaries may not add costs relating to subcontracts not provided for in Annex 1, unless such additional subcontracts are approved by an amendment or in accordance with Article 13.

## **CHAPTER 3 GRANT**

### **ARTICLE 5 — GRANT AMOUNT, FORM OF GRANT, REIMBURSEMENT RATES AND FORMS OF COSTS**

#### **5.1 Maximum grant amount**

The **‘maximum grant amount’** is **EUR 9,724,969.13** (nine million seven hundred and twenty four thousand nine hundred and sixty nine EURO and thirteen eurocents).

## 5.2 Form of grant, reimbursement rates and forms of costs

The grant reimburses **100% of the eligible costs of the beneficiaries and the linked third parties that are non-profit legal entities and 70% of the eligible costs of the beneficiaries that are profit legal entities** (see Article 6) ('reimbursement of eligible costs grant') (see Annex 2).

The estimated eligible costs of the action are EUR **11,308,117.50** (eleven million three hundred and eight thousand one hundred and seventeen EURO and fifty eurocents).

Eligible costs (see Article 6) must be declared under the following forms ('forms of costs'):

(a) for **direct personnel costs**:

- as actually incurred costs ('**actual costs**') or
- on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**').

Personnel **costs for SME owners or beneficiaries that are natural persons** not receiving a salary (see Article 6.2, Points A.4 and A.5) must be declared on the basis of the amount per unit set out in Annex 2 (**unit costs**);

(b) for **direct costs for subcontracting**: as actually incurred costs (**actual costs**);

(c) for **direct costs of providing financial support to third parties**: *not applicable*;

(d) for **other direct costs**: as actually incurred costs (**actual costs**);

(e) for **indirect costs**: on the basis of a flat-rate applied as set out in Article 6.2, Point E ('**flat-rate costs**');

(f) *specific cost category(ies): not applicable.*

## 5.3 Final grant amount — Calculation

The '**final grant amount**' depends on the actual extent to which the action is implemented in accordance with the Agreement's terms and conditions.

This amount is calculated by the *Agency* — when the payment of the balance is made (see Article 21.4) — in the following steps:

Step 1 – Application of the reimbursement rates to the eligible costs

Step 2 – Limit to the maximum grant amount

Step 3 – Reduction due to the no-profit rule

Step 4 – Reduction due to improper implementation or breach of other obligations

### 5.3.1 Step 1 — Application of the reimbursement rates to the eligible costs

The reimbursement rate(s) (see Article 5.2) are applied to the eligible costs (actual costs, unit costs and flat-rate costs; see Article 6) declared by the beneficiaries *and linked third parties* (see Article 20) and approved by the *Agency* (see Article 21).

### 5.3.2 Step 2 — Limit to the maximum grant amount

If the amount obtained following Step 1 is higher than the maximum grant amount set out in Article 5.1, it will be limited to the latter.

### 5.3.3 Step 3 — Reduction due to the no-profit rule

The grant must not produce a profit.

‘**Profit**’ means the surplus of the amount obtained following Steps 1 and 2 plus the action’s total receipts, over the action’s total eligible costs.

The ‘**action’s total eligible costs**’ are the consolidated total eligible costs approved by the *Agency*.

The ‘**action’s total receipts**’ are the consolidated total receipts generated during its duration (see Article 3).

The following are considered **receipts**:

- (a) income generated by the action; if the income is generated from selling equipment or other assets purchased under the Agreement, the receipt is up to the amount declared as eligible under the Agreement;
- (b) financial contributions given by third parties to the beneficiary *or to a linked third party* specifically to be used for the action, and
- (c) in-kind contributions provided by third parties free of charge and specifically to be used for the action, if they have been declared as eligible costs.

The following are however not considered receipts:

- (a) income generated by exploiting the action’s results (see Article 28);
- (b) financial contributions by third parties, if they may be used to cover costs other than the eligible costs (see Article 6);
- (c) financial contributions by third parties with no obligation to repay any amount unused at the end of the period set out in Article 3.

If there is a profit, it will be deducted from the amount obtained following Steps 1 and 2.

### 5.3.4 Step 4 — Reduction due to improper implementation or breach of other obligations — Reduced grant amount — Calculation

If the grant is reduced (see Article 43), the *Agency* will calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of

the action or to the seriousness of the breach of obligations in accordance with Article 43.2) from the maximum grant amount set out in Article 5.1.

The final grant amount will be the lower of the following two:

- the amount obtained following Steps 1 to 3 or
- the reduced grant amount following Step 4.

#### **5.4 Revised final grant amount — Calculation**

If — after the payment of the balance (in particular, after checks, reviews, audits or investigations; see Article 22) — the *Agency* rejects costs (see Article 42) or reduces the grant (see Article 43), it will calculate the ‘**revised final grant amount**’ for the beneficiary concerned by the findings.

This amount is calculated by the *Agency* on the basis of the findings, as follows:

- in case of **rejection of costs**: by applying the reimbursement rate to the revised eligible costs approved by the *Agency* for the beneficiary concerned;
- in case of **reduction of the grant**: by calculating the concerned beneficiary’s share in the grant amount reduced in proportion to its improper implementation of the action or to the seriousness of its breach of obligations (see Article 43.2).

In case of **rejection of costs and reduction of the grant**, the revised final grant amount for the beneficiary concerned will be the lower of the two amounts above.

## **ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS**

### **6.1 General conditions for costs to be eligible**

‘**Eligible costs**’ are costs that meet the following criteria:

(a) for **actual costs**:

- (i) they must be actually incurred by the beneficiary;
- (ii) they must be incurred in the period set out in Article 3, with the exception of costs relating to the submission of the periodic report for the last reporting period and the final report (see Article 20);
- (iii) they must be indicated in the estimated budget set out in Annex 2;
- (iv) they must be incurred in connection with the action as described in Annex 1 and necessary for its implementation;
- (v) they must be identifiable and verifiable, in particular recorded in the beneficiary’s accounts in accordance with the accounting standards applicable in the country where the beneficiary is established and with the beneficiary’s usual cost accounting practices;
- (vi) they must comply with the applicable national law on taxes, labour and social security, and

(vii) they must be reasonable, justified and must comply with the principle of sound financial management, in particular regarding economy and efficiency;

(b) for **unit costs**:

(i) they must be calculated as follows:

{amounts per unit set out in Annex 2 or calculated by the beneficiary in accordance with its usual cost accounting practices (see Article 6.2, Point A)

multiplied by

the number of actual units};

(ii) the number of actual units must comply with the following conditions:

- the units must be actually used or produced in the period set out in Article 3;
- the units must be necessary for implementing the action or produced by it, and
- the number of units must be identifiable and verifiable, in particular supported by records and documentation (see Article 18);

(c) for **flat-rate costs**:

(i) they must be calculated by applying the flat-rate set out in Annex 2, and

(ii) the costs (actual costs or unit costs) to which the flat-rate is applied must comply with the conditions for eligibility set out in this Article.

## 6.2 Specific conditions for costs to be eligible

Costs are eligible if they comply with the general conditions (see above) and the specific conditions set out below for each of the following budget categories:

- A. direct personnel costs;
- B. direct costs of subcontracting;
- C. *not applicable*;
- D. other direct costs;
- E. indirect costs;
- F. *not applicable*.

‘Direct costs’ are costs that are directly linked to the action implementation and can therefore be attributed to it directly. They must not include any indirect costs (see Point E below).

‘Indirect costs’ are costs that are not directly linked to the action implementation and therefore cannot be attributed directly to it.

## A. Direct personnel costs

### Types of eligible personnel costs

A.1 **Personnel costs** are eligible, if they are related to personnel working for the beneficiary under an employment contract (or equivalent appointing act) and assigned to the action (**‘costs for employees (or equivalent)’**). They must be limited to salaries (including during parental leave), social security contributions, taxes and other costs included in the **remuneration**, if they arise from national law or the employment contract (or equivalent appointing act).

Beneficiaries that are non-profit legal entities<sup>2</sup> may also declare as personnel costs **additional remuneration** for personnel assigned to the action (including payments on the basis of supplementary contracts regardless of their nature), if:

- (a) it is part of the beneficiary’s usual remuneration practices and is paid in a consistent manner whenever the same kind of work or expertise is required;
- (b) the criteria used to calculate the supplementary payments are objective and generally applied by the beneficiary, regardless of the source of funding used.

Additional remuneration for personnel assigned to the action is eligible up to the following amount:

- (a) if the person works full time and exclusively on the action during the full year: up to EUR 8 000;
- (b) if the person works exclusively on the action but not full-time or not for the full year: up to the corresponding pro-rata amount of EUR 8 000, or
- (c) if the person does not work exclusively on the action: up to a pro-rata amount calculated as follows:

{ {EUR 8 000

divided by

the number of annual productive hours (see below)},

multiplied by

the number of hours that the person has worked on the action during the year}.

A.2 The **costs for natural persons working under a direct contract** with the beneficiary other than an employment contract are eligible personnel costs, if:

- (a) the person works under the beneficiary’s instructions and, unless otherwise agreed with the beneficiary, on the beneficiary’s premises;

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<sup>2</sup> For the definition, see Article 2.1(14) of the Rules for Participation Regulation No 1290/2013: ‘**non-profit legal entity**’ means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

(b) the result of the work carried out belongs to the beneficiary, and

(c) the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

A.3 The **costs of personnel seconded by a third party against payment** are eligible personnel costs, if the conditions in Article 11.1 are met.

A.4 **Costs of owners** of beneficiaries that are small and medium-sized enterprises (**'SME owners'**) who are working on the action and who do not receive a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual hours worked on the action.

A.5 **Costs of 'beneficiaries that are natural persons'** not receiving a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 2 multiplied by the number of actual hours worked on the action.

### **Calculation**

Personnel costs must be calculated by the beneficiaries as follows:

{hourly rate

multiplied by

the number of actual hours worked on the action},

plus

for non-profit legal entities: additional remuneration to personnel assigned to the action under the conditions set out above (Point A.1)}.

The number of actual hours declared for a person must be identifiable and verifiable (see Article 18).

The total number of hours declared in EU or Euratom grants, for a person for a year, cannot be higher than the annual productive hours used for the calculations of the hourly rate. Therefore, the maximum number of hours that can be declared for the grant is:

{the number of annual productive hours for the year (see below)

minus

total number of hours declared by the beneficiary for that person in that year for other EU or Euratom grants}.

The **'hourly rate'** is one of the following:

(a) for personnel costs declared as **actual costs**: the hourly rate is the amount calculated as follows:

{actual annual personnel costs (excluding additional remuneration) for the person

divided by

number of annual productive hours}.

The beneficiaries must use the annual personnel costs and the number of annual productive hours for each financial year covered by the reporting period. If a financial year is not closed at the end of the reporting period, the beneficiaries must use the hourly rate of the last closed financial year available.

For the ‘number of annual productive hours’, the beneficiaries may choose one of the following:

- (i) ‘fixed number of hours’: 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);
- (ii) ‘individual annual productive hours’: the total number of hours worked by the person in the year for the beneficiary, calculated as follows:

{annual workable hours of the person (according to the employment contract, applicable collective labour agreement or national law)

plus

overtime worked

minus

absences (such as sick leave and special leave)}.

‘Annual workable hours’ means the period during which the personnel must be working, at the employer’s disposal and carrying out his/her activity or duties under the employment contract, applicable collective labour agreement or national working time legislation.

If the contract (or applicable collective labour agreement or national working time legislation) does not allow to determine the annual workable hours, this option cannot be used;

- (iii) ‘standard annual productive hours’: the ‘standard number of annual hours’ generally applied by the beneficiary for its personnel in accordance with its usual cost accounting practices. This number must be at least 90% of the ‘standard annual workable hours’.

If there is no applicable reference for the standard annual workable hours, this option cannot be used.

For all options, the actual time spent on **parental leave** by a person assigned to the action may be deducted from the number of annual productive hours;

- (b) for personnel costs declared on the basis of **unit costs**: the hourly rate is one of the following:

- (i) for SME owners or beneficiaries that are natural persons: the hourly rate set out in Annex 2 (see Points A.4 and A.5 above), or
- (ii) for personnel costs declared on the basis of the beneficiary’s usual cost accounting practices: the hourly rate calculated by the beneficiary in accordance with its usual cost accounting practices, if:

- the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;
- the hourly rate is calculated using the actual personnel costs recorded in the beneficiary's accounts, excluding any ineligible cost or costs included in other budget categories.

The actual personnel costs may be adjusted by the beneficiary on the basis of budgeted or estimated elements. Those elements must be relevant for calculating the personnel costs, reasonable and correspond to objective and verifiable information;

and

- the hourly rate is calculated using the number of annual productive hours (see above).

**B. Direct costs of subcontracting** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if the conditions in Article 13.1.1 are met.

**C. Direct costs of providing financial support to third parties** *not applicable.*

**D. Other direct costs**

**D.1 Travel costs and related subsistence allowances** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible if they are in line with the beneficiary's usual practices on travel.

**D.2** *The depreciation costs of equipment, infrastructure or other assets (new or second-hand) as recorded in the beneficiary's accounts are eligible, if they were purchased in accordance with Article 10.1.1 and written off in accordance with international accounting standards and the beneficiary's usual accounting practices.*

*The costs of renting or leasing equipment, infrastructure or other assets (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees.*

*The costs of equipment, infrastructure or other assets contributed in-kind against payment are eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets, do not include any financing fees and if the conditions in Article 11.1 are met.*

*The only portion of the costs that will be taken into account is that which corresponds to the duration of the action and rate of actual use for the purposes of the action.*

**D.3 Costs of other goods and services** (including related duties, taxes and charges such as non-deductible value added tax (VAT) paid by the beneficiary) are eligible, if they are:

- (a) purchased specifically for the action and in accordance with Article 10.1.1 or

(b) contributed in kind against payment and in accordance with Article 11.1.

Such goods and services include, for instance, consumables and supplies, dissemination (including open access), protection of results, certificates on the financial statements (if they are required by the Agreement), certificates on the methodology, translations and publications.

**D.4 Capitalised and operating costs of ‘large research infrastructure’<sup>3</sup> directly used for the action are eligible, if:**

- (a) *the value of the large research infrastructure represents at least 75% of the total fixed assets (at historical value in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure<sup>4</sup>);*
- (b) *the beneficiary’s methodology for declaring the costs for large research infrastructure has been positively assessed by the Commission (‘ex-ante assessment’);*
- (c) *the beneficiary declares as direct eligible costs only the portion which corresponds to the duration of the action and the rate of actual use for the purposes of the action, and*
- (d) *they comply with the conditions as further detailed in the annotations to the H2020 grant agreements.*

## **E. Indirect costs**

**Indirect costs** are eligible if they are declared on the basis of the flat-rate of 25% of the eligible direct costs (see Article 5.2 and Points A to D above), from which are excluded:

- (a) costs of subcontracting and
- (b) costs of in-kind contributions provided by third parties which are not used on the beneficiary’s premises;
- (c) *not applicable;*
- (d) *not applicable.*

<sup>3</sup> ‘**Large research infrastructure**’ means research infrastructure of a total value of at least EUR 20 million, for a beneficiary, calculated as the sum of historical asset values of each individual research infrastructure of that beneficiary, as they appear in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure.

<sup>4</sup> For the definition, see Article 2(6) of Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) (OJ L 347, 20.12.2013 p.104)-(**Horizon 2020 Framework Programme Regulation No 1291/2013**): ‘**Research infrastructure**’ are facilities, resources and services that are used by the research communities to conduct research and foster innovation in their fields. Where relevant, they may be used beyond research, e.g. for education or public services. They include: major scientific equipment (or sets of instruments); knowledge-based resources such as collections, archives or scientific data; e-infrastructures such as data and computing systems and communication networks; and any other infrastructure of a unique nature essential to achieve excellence in research and innovation. Such infrastructures may be ‘single-sited’, ‘virtual’ or ‘distributed’.

Beneficiaries receiving an operating grant<sup>5</sup> financed by the EU or Euratom budget cannot declare indirect costs for the period covered by the operating grant.

#### **F. Specific cost category(ies)**

*Not applicable*

#### **6.3 Conditions for costs of linked third parties to be eligible**

*Costs incurred by linked third parties are eligible if they fulfil — mutatis mutandis — the general and specific conditions for eligibility set out in this Article (Article 6.1 and 6.2) and Article 14.1.1.*

#### **6.4 Conditions for in-kind contributions provided by third parties free of charge to be eligible**

**In-kind contributions provided free of charge** are eligible direct costs (for the beneficiary *or linked third party*), if the costs incurred by the third party fulfil — *mutatis mutandis* — the general and specific conditions for eligibility set out in this Article (Article 6.1 and 6.2) and Article 12.1.

#### **6.5 Ineligible costs**

‘**Ineligible costs**’ are:

- (a) costs that do not comply with the conditions set out above (Article 6.1 to 6.4), in particular:
  - (i) costs related to return on capital;
  - (ii) debt and debt service charges;
  - (iii) provisions for future losses or debts;
  - (iv) interest owed;
  - (v) doubtful debts;
  - (vi) currency exchange losses;
  - (vii) bank costs charged by the beneficiary’s bank for transfers from the *Agency*;
  - (viii) excessive or reckless expenditure;
  - (ix) deductible VAT;
  - (x) costs incurred during suspension of the implementation of the action (see Article 49);

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<sup>5</sup> For the definition, see Article 121(1)(b) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 218, 26.10.2012, p.1) (‘**Financial Regulation No 966/2012**’): ‘**operating grant**’ means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

- (b) costs declared under another EU or Euratom grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the *Agency* for the purpose of implementing the EU or Euratom budget); in particular, indirect costs if the beneficiary is already receiving an operating grant financed by the EU or Euratom budget in the same period.

## **6.6 Consequences of declaration of ineligible costs**

Declared costs that are ineligible will be rejected (see Article 42).

This may also lead to any of the other measures described in Chapter 6.

## **CHAPTER 4 RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **SECTION 1 RIGHTS AND OBLIGATIONS RELATED TO IMPLEMENTING THE ACTION**

#### **ARTICLE 7 — GENERAL OBLIGATION TO PROPERLY IMPLEMENT THE ACTION**

##### **7.1 General obligation to properly implement the action**

The beneficiaries must implement the action as described in Annex 1 and in compliance with the provisions of the Agreement and all legal obligations under applicable EU, international and national law.

##### **7.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

#### **ARTICLE 8 — RESOURCES TO IMPLEMENT THE ACTION — THIRD PARTIES INVOLVED IN THE ACTION**

The beneficiaries must have the appropriate resources to implement the action.

If it is necessary to implement the action, the beneficiaries may:

- purchase goods, works and services (see Article 10);
- use in-kind contributions provided by third parties against payment (see Article 11);
- use in-kind contributions provided by third parties free of charge (see Article 12);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 13);
- call upon linked third parties to implement action tasks described in Annex 1 (see Article 14).

In these cases, the beneficiaries retain sole responsibility towards the *Agency* and the other beneficiaries for implementing the action.

## **ARTICLE 9 — IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING EU FUNDING**

*Not applicable*

## **ARTICLE 10 — PURCHASE OF GOODS, WORKS OR SERVICES**

### **10.1 Rules for purchasing goods, works or services**

10.1.1 If necessary to implement the action, the beneficiaries may purchase goods, works or services.

The beneficiaries must make such purchases ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 35).

The beneficiaries must ensure that *the Agency*, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their contractors.

10.1.2 Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2004/18/EC<sup>6</sup> or ‘contracting entities’ within the meaning of Directive 2004/17/EC<sup>7</sup> must comply with the applicable national law on public procurement.

### **10.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under Article 10.1.1, the costs related to the contract concerned will be ineligible (see Article 6) and will be rejected (see Article 42).

If a beneficiary breaches any of its obligations under Article 10.1.2, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 11 — USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES AGAINST PAYMENT**

### **11.1 Rules for the use of in-kind contributions against payment**

If necessary to implement the action, the beneficiaries may use in-kind contributions provided by third parties against payment.

The beneficiaries may declare costs related to the payment of in-kind contributions as eligible (see Article 6.1 and 6.2), up to the third parties’ costs for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services.

The third parties and their contributions must be set out in Annex 1. The *Agency* may however approve in-kind contributions not set out in Annex 1 without amendment (see Article 55), if:

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<sup>6</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.04.2004, p. 114).

<sup>7</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.04.2004, p. 1).

- they are specifically justified in the periodic technical report and
- their use does not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

The beneficiaries must ensure that *the Agency*, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards the third parties.

## **11.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the costs related to the payment of the in-kind contribution will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 12 — USE OF IN-KIND CONTRIBUTIONS PROVIDED BY THIRD PARTIES FREE OF CHARGE**

### **12.1 Rules for the use of in-kind contributions free of charge**

If necessary to implement the action, the beneficiaries may use in-kind contributions provided by third parties free of charge.

The beneficiaries may declare costs incurred by the third parties for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services as eligible in accordance with Article 6.4.

The third parties and their contributions must be set out in Annex 1. The *Agency* may however approve in-kind contributions not set out in Annex 1 without amendment (see Article 55), if:

- they are specifically justified in the periodic technical report and
- their use does not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

The beneficiaries must ensure that *the Agency*, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards the third parties.

### **12.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the costs incurred by the third parties related to the in-kind contribution will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS**

### **13.1 Rules for subcontracting action tasks**

13.1.1 If necessary to implement the action, the beneficiaries may award subcontracts covering the implementation of certain action tasks described in Annex 1.

Subcontracting may cover only a limited part of the action.

The beneficiaries must award the subcontracts ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 35).

The tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1 and the total estimated costs of subcontracting per beneficiary must be set out in Annex 2. The *Agency* may however approve subcontracts not set out in Annex 1 and 2 without amendment (see Article 55), if:

- they are specifically justified in the periodic technical report and
- they do not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

The beneficiaries must ensure that *the Agency*, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their subcontractors.

13.1.2 The beneficiaries must ensure that their obligations under Articles 35, 36, 38 and 46 also apply to the subcontractors.

Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2004/18/EC or ‘contracting entities’ within the meaning of Directive 2004/17/EC must comply with the applicable national law on public procurement.

### **13.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under Article 13.1.1, the costs related to the subcontract concerned will be ineligible (see Article 6) and will be rejected (see Article 42).

If a beneficiary breaches any of its obligations under Article 13.1.2, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## ARTICLE 14 — IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES

### 14.1 Rules for calling upon linked third parties to implement part of the action

14.1.1 The following **affiliated entities**<sup>9</sup> and **third parties with a legal link to a beneficiary**<sup>10</sup> ('**linked third parties**') may implement the action tasks attributed to them in Annex 1:

- UNIVERSITA DEGLI STUDI DI GENOVA (UNIGE), affiliated or linked to TICASS

The linked third parties may declare as eligible the costs they incur for implementing the action tasks in accordance with Article 6.3.

The beneficiaries must ensure that the Agency, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their linked third parties.

14.1.2 The beneficiaries must ensure that their obligations under Articles 18, 20, 35, 36 and 38 also apply to their linked third parties.

### 14.2 Consequences of non-compliance

If any obligation under Article 14.1.1 is breached, the costs of the linked third party will be ineligible (see Article 6) and will be rejected (see Article 42).

If any obligation under Article 14.1.2 is breached, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## ARTICLE 15 — FINANCIAL SUPPORT TO THIRD PARTIES

### 15.1 Rules for providing financial support to third parties

*Not applicable*

<sup>9</sup> For the definition, see Article 2.1(2) of the Rules for Participation Regulation No 1290/2013: '**affiliated entity**' means any legal entity that is:

- under the direct or indirect control of a participant, or
- under the same direct or indirect control as the participant, or
- directly or indirectly controlling a participant.

'Control' may take any of the following forms:

- (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
- (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

However the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:

- (a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
- (b) the legal entities concerned are owned or supervised by the same public body.

<sup>10</sup> '**Third party with a legal link to a beneficiary**' is any legal entity which has a legal link to the beneficiary implying collaboration that is not limited to the action.

## **15.2 Financial support in the form of prizes**

*Not applicable*

## **15.3 Consequences of non-compliance**

*Not applicable*

## **ARTICLE 16 — PROVISION OF TRANS-NATIONAL OR VIRTUAL ACCESS TO RESEARCH INFRASTRUCTURE**

### **16.1 Rules for providing trans-national access to research infrastructure**

*Not applicable*

### **16.2 Rules for providing virtual access to research infrastructure**

*Not applicable*

### **16.3 Consequences of non-compliance**

*Not applicable*

## **SECTION 2 RIGHTS AND OBLIGATIONS RELATED TO THE GRANT ADMINISTRATION**

### **ARTICLE 17 — GENERAL OBLIGATION TO INFORM**

#### **17.1 General obligation to provide information upon request**

The beneficiaries must provide — during implementation of the action or afterwards and in accordance with Article 41.2 — any information requested in order to verify eligibility of the costs, proper implementation of the action and compliance with any other obligation under the Agreement.

#### **17.2 Obligation to keep information up to date and to inform about events and circumstances likely to affect the Agreement**

Each beneficiary must keep information stored in the 'Beneficiary Register' (via the electronic exchange system; see Article 52) up to date, in particular, its name, address, legal representatives, legal form and organisation type.

Each beneficiary must immediately inform the coordinator — which must immediately inform the Agency and the other beneficiaries — of any of the following:

- (a) **events** which are likely to affect significantly or delay the implementation of the action or the EU's financial interests, in particular:
  - (i) changes in its legal, financial, technical, organisational or ownership situation *or those of its linked third parties and*
  - (ii) *changes in the name, address, legal form, organisation type of its linked third parties;*

(b) **circumstances** affecting:

- (i) the decision to award the grant or
- (ii) compliance with requirements under the Agreement.

### **17.3 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 18 — KEEPING RECORDS — SUPPORTING DOCUMENTATION**

### **18.1 Obligation to keep records and other supporting documentation**

The beneficiaries must — for a period of *five* years after the payment of the balance — keep records and other supporting documentation in order to prove the proper implementation of the action and the costs they declare as eligible.

They must make them available upon request (see Article 17) or in the context of checks, reviews, audits or investigations (see Article 22).

If there are on-going checks, reviews, audits, investigations, litigation or other pursuits of claims under the Agreement (including the extension of findings; see Articles 22), the beneficiaries must keep the records and other supporting documentation until the end of these procedures.

The beneficiaries must keep the original documents. Digital and digitalised documents are considered originals if they are authorised by the applicable national law. The *Agency* may accept non-original documents if it considers that they offer a comparable level of assurance.

#### **18.1.1 Records and other supporting documentation on the scientific and technical implementation**

The beneficiaries must keep records and other supporting documentation on scientific and technical implementation of the action in line with the accepted standards in the respective field.

#### **18.1.2 Records and other documentation to support the costs declared**

The beneficiaries must keep the records and documentation supporting the costs declared, in particular the following:

- (a) for **actual costs**: adequate records and other supporting documentation to prove the costs declared, such as contracts, subcontracts, invoices and accounting records. In addition, the beneficiaries' usual cost accounting practices and internal control procedures must enable direct reconciliation between the amounts declared, the amounts recorded in their accounts and the amounts stated in the supporting documentation;
- (b) for **unit costs**: adequate records and other supporting documentation to prove the number of units declared. Beneficiaries do not need to identify the actual eligible costs covered or to keep

or provide supporting documentation (such as accounting statements) to prove the amount per unit.

In addition, for **direct personnel costs declared as unit costs calculated in accordance with the beneficiary's usual cost accounting practices**, the beneficiaries must keep adequate records and documentation to prove that the cost accounting practices used comply with the conditions set out in Article 6.2, Point A.

The beneficiaries *and linked third parties* may submit to the Commission, for approval, a certificate (drawn up in accordance with Annex 6) stating that their usual cost accounting practices comply with these conditions (**'certificate on the methodology'**). If the certificate is approved, costs declared in line with this methodology will not be challenged subsequently, unless the beneficiaries have concealed information for the purpose of the approval.

- (c) for **flat-rate costs**: adequate records and other supporting documentation to prove the eligibility of the costs to which the flat-rate is applied. The beneficiaries do not need to identify the costs covered or provide supporting documentation (such as accounting statements) to prove the amount declared at a flat-rate.

In addition, for **personnel costs** (declared as actual costs or on the basis of unit costs), the beneficiaries must keep **time records** for the number of hours declared. The time records must be in writing and approved by the persons working on the action and their supervisors, at least monthly. In the absence of reliable time records of the hours worked on the action, the *Agency* may accept alternative evidence supporting the number of hours declared, if it considers that it offers an adequate level of assurance.

As an exception, for **persons working exclusively on the action**, there is no need to keep time records, if the beneficiary signs a **declaration** confirming that the persons concerned have worked exclusively on the action.

*For costs declared by linked third parties (see Article 14), it is the beneficiary that must keep the originals of the financial statements and the certificates on the financial statements of the linked third parties.*

## **18.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, costs insufficiently substantiated will be ineligible (see Article 6) and will be rejected (see Article 42), and the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 19 — SUBMISSION OF DELIVERABLES**

### **19.1 Obligation to submit deliverables**

The coordinator must submit the **'deliverables'** identified in Annex 1, in accordance with the timing and conditions set out in it.

## 19.2 Consequences of non-compliance

If the coordinator breaches any of its obligations under this Article, the *Agency* may apply any of the measures described in Chapter 6.

## ARTICLE 20 — REPORTING — PAYMENT REQUESTS

### 20.1 Obligation to submit reports

The coordinator must submit to the *Agency* (see Article 52) the technical and financial reports set out in this Article. These reports include requests for payment and must be drawn up using the forms and templates provided in the electronic exchange system (see Article 52).

### 20.2 Reporting periods

The action is divided into the following ‘**reporting periods**’:

- RP1: from month 1 to month 18
- RP2: *from month 19 to month 36*
- RP3: *from month 37 to month 48*

### 20.3 Periodic reports — Requests for interim payments

The coordinator must submit a periodic report within 60 days following the end of each reporting period.

The **periodic report** must include the following:

(a) a ‘**periodic technical report**’ containing:

- (i) an **explanation of the work carried out** by the beneficiaries;
- (ii) an **overview of the progress** towards the objectives of the action, including milestones and deliverables identified in Annex 1.

This report must include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out.

The report must also detail the exploitation and dissemination of the results and — if required in Annex 1 — an updated ‘**plan for the exploitation and dissemination of the results**’;

- (iii) a **summary** for publication by the *Agency*;
- (iv) the answers to the ‘**questionnaire**’, covering issues related to the action implementation and the economic and societal impact, notably in the context of the Horizon 2020 key performance indicators and the Horizon 2020 monitoring requirements;

(b) a ‘**periodic financial report**’ containing:

- (i) an ‘**individual financial statement**’ (see Annex 4) from each beneficiary *and from each linked third party*, for the reporting period concerned.

The individual financial statement must detail the eligible costs (actual costs, unit costs and flat-rate costs; see Article 6) for each budget category (see Annex 2).

The beneficiaries *and linked third parties* must declare all eligible costs, even if — for actual costs, unit costs and flat-rate costs — they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts which are not declared in the individual financial statement will not be taken into account by the *Agency*.

If an individual financial statement is not submitted for a reporting period, it may be included in the periodic financial report for the next reporting period.

The individual financial statements of the last reporting period must also detail the **receipts of the action** (see Article 5.3.3).

Each beneficiary *and each linked third party* must **certify** that:

- the information provided is full, reliable and true;
  - the costs declared are eligible (see Article 6);
  - the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, reviews, audits and investigations (see Article 22), and
  - for the last reporting period: that all the receipts have been declared (see Article 5.3.3);
- (ii) an **explanation of the use of resources** and the information on subcontracting (see Article 13) and in-kind contributions provided by third parties (see Articles 11 and 12) from each beneficiary *and from each linked third party*, for the reporting period concerned;
- (iii) *not applicable*;
- (iv) a ‘**periodic summary financial statement**’ (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements for the reporting period concerned and including — except for the last reporting period — the **request for interim payment**.

#### **20.4 Final report — Request for payment of the balance**

In addition to the periodic report for the last reporting period, the coordinator must submit the final report within 60 days following the end of the last reporting period.

The **final report** must include the following:

- (a) a ‘**final technical report**’ with a **summary** for publication containing:
- (i) an overview of the results and their exploitation and dissemination;

- (ii) the conclusions on the action, and
  - (iii) the socio-economic impact of the action;
- (b) a **‘final financial report’** containing:
- (i) a **‘final summary financial statement’** (see Annex 4), created automatically by the electronic exchange system, consolidating the individual financial statements for all reporting periods and including the **request for payment of the balance** and
  - (ii) a **‘certificate on the financial statements’** (drawn up in accordance with Annex 5) for each beneficiary *and for each linked third party*, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Article 6.2, Point A).

## 20.5 Information on cumulative expenditure incurred

*Not applicable*

## 20.6 Currency for financial statements and conversion into euro

Financial statements must be drafted in euro.

Beneficiaries *and linked third parties* with accounting established in a currency other than the euro must convert the costs recorded in their accounts into euro, at the average of the daily exchange rates published in the C series of the *Official Journal of the European Union*, calculated over the corresponding reporting period.

If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, they must be converted at the average of the monthly accounting rates published on the Commission’s website, calculated over the corresponding reporting period.

Beneficiaries *and linked third parties* with accounting established in euro must convert costs incurred in another currency into euro according to their usual accounting practices.

## 20.7 Language of reports

All reports (technical and financial reports, including financial statements) must be submitted in the language of the Agreement.

## 20.8 Consequences of non-compliance — Suspension of the payment deadline — Termination

If the reports submitted do not comply with this Article, the *Agency* may suspend the payment deadline (see Article 47) and apply any of the other measures described in Chapter 6.

If the coordinator breaches its obligation to submit the reports and if it fails to comply with this obligation within 30 days following a written reminder sent by the *Agency*, the Agreement may be terminated (see Article 50).

## ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

### 21.1 Payments to be made

The following payments will be made to the coordinator:

- one **pre-financing payment**;
- one or more **interim payments**, on the basis of the request(s) for interim payment (see Article 20), and
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 20).

### 21.2 Pre-financing payment — Amount — Amount retained for the Guarantee Fund

The aim of the pre-financing is to provide the beneficiaries with a float.

It remains the property of the *EU* until the payment of the balance.

The amount of the pre-financing payment will be EUR **5,186,326.04** (five million one hundred and eighty six thousand three hundred and twenty six EURO and four eurocents).

The *Agency* will — except if Article 48 applies — make the pre-financing payment to the coordinator within 30 days either from the entry into force of the Agreement (see Article 58) or from 10 days before the starting date of the action (see Article 3), whichever is the latest.

An amount of EUR **486,248.46** (four hundred and eighty six thousand two hundred and forty eight EURO and forty six eurocents), corresponding to 5% of the maximum grant amount (see Article 5.1), is retained by the *Agency* from the pre-financing payment and transferred into the ‘**Guarantee Fund**’.

### 21.3 Interim payments — Amount — Calculation

Interim payments reimburse the eligible costs incurred for the implementation of the action during the corresponding reporting periods.

The *Agency* will pay to the coordinator the amount due as interim payment within 90 days from receiving the periodic report (see Article 20.3), except if Articles 47 or 48 apply.

Payment is subject to the approval of the periodic report. Its approval does not imply recognition of the compliance, authenticity, completeness or correctness of its content.

The **amount due as interim payment** is calculated by the *Agency* in the following steps:

Step 1 – Application of the reimbursement rates

Step 2 – Limit to 90% of the maximum grant amount

#### 21.3.1 Step 1 — Application of the reimbursement rates

The reimbursement rate(s) (see Article 5.2) are applied to the eligible costs (actual costs, unit costs and flat-rate costs ; see Article 6) declared by the beneficiaries *and the linked third parties* (see Article 20) and approved by the *Agency* (see above) for the concerned reporting period.

### 21.3.2 Step 2 — Limit to 90% of the maximum grant amount

The total amount of pre-financing and interim payments must not exceed 90% of the maximum grant amount set out in Article 5.1. The maximum amount for the interim payment will be calculated as follows:

{90% of the maximum grant amount (see Article 5.1)}

minus

{pre-financing and previous interim payments}}.

### 21.4 Payment of the balance — Amount — Calculation — Release of the amount retained for the Guarantee Fund

The payment of the balance reimburses the remaining part of the eligible costs incurred by the beneficiaries for the implementation of the action.

If the total amount of earlier payments is greater than the final grant amount (see Article 5.3), the payment of the balance takes the form of a recovery (see Article 44).

If the total amount of earlier payments is lower than the final grant amount, the *Agency* will pay the balance within 90 days from receiving the final report (see Article 20.4), except if Articles 47 or 48 apply.

Payment is subject to the approval of the final report. Its approval does not imply recognition of the compliance, authenticity, completeness or correctness of its content.

The **amount due as the balance** is calculated by the *Agency* by deducting the total amount of pre-financing and interim payments (if any) already made, from the final grant amount determined in accordance with Article 5.3:

{final grant amount (see Article 5.3)}

minus

{pre-financing and interim payments (if any) made}}.

At the payment of the balance, the amount retained for the Guarantee Fund (see above) will be released and:

- if the balance is positive: the amount released will be paid in full to the coordinator together with the amount due as the balance;
- if the balance is negative (payment of the balance taking the form of recovery): it will be deducted from the amount released (see Article 44.1.2). If the resulting amount:
  - is positive, it will be paid to the coordinator
  - is negative, it will be recovered.

The amount to be paid may however be offset — without the beneficiary's consent — against any other amount owed by the beneficiary to the *Agency*, the Commission or another executive agency

(under the EU or Euratom budget), up to the maximum EU contribution indicated, for that beneficiary, in the estimated budget (see Annex 2).

### **21.5 Notification of amounts due**

When making payments, the *Agency* will formally notify to the coordinator the amount due, specifying whether it concerns an interim payment or the payment of the balance.

For the payment of the balance, the notification will also specify the final grant amount.

In the case of reduction of the grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 43 and 44.

### **21.6 Currency for payments**

The *Agency* will make all payments in euro.

### **21.7 Payments to the coordinator — Distribution to the beneficiaries**

Payments will be made to the coordinator.

Payments to the coordinator will discharge the *Agency* from its payment obligation.

The coordinator must distribute the payments between the beneficiaries without unjustified delay.

Pre-financing may however be distributed only:

- (a) if the minimum number of beneficiaries set out in the call for proposals has acceded to the Agreement (see Article 56) and
- (b) to beneficiaries that have acceded to the Agreement (see Article 56).

### **21.8 Bank account for payments**

All payments will be made to the following bank account:

Name of bank: DANSKE BANK, STATENS BETALINGER  
Address of branch: HOLMENS KANAL 2-12 HOEJE TAASTRUP, Denmark  
Full name of the account holder: CITY OF COPENHAGEN  
Full account number (including bank codes):  
IBAN code: DK [REDACTED]

### **21.9 Costs of payment transfers**

The cost of the payment transfers is borne as follows:

- the *Agency* bears the cost of transfers charged by its bank;
- the beneficiary bears the cost of transfers charged by its bank;
- the party causing a repetition of a transfer bears all costs of the repeated transfer.

## 21.10 Date of payment

Payments by the *Agency* are considered to have been carried out on the date when they are debited to its account.

## 21.11 Consequences of non-compliance

21.11.1 If the *Agency* does not pay within the payment deadlines (see above), the beneficiaries are entitled to **late-payment interest** at the rate applied by the European Central Bank (ECB) for its main refinancing operations in euros ('reference rate'), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the payment deadline expires, as published in the C series of the *Official Journal of the European Union*.

If the late-payment interest is lower than or equal to EUR 200, it will be paid to the coordinator only upon request submitted within two months of receiving the late payment.

Late-payment interest is not due if all beneficiaries are EU Member States (including regional and local government authorities or other public bodies acting on behalf of a Member State for the purpose of this Agreement).

Suspension of the payment deadline or payments (see Articles 47 and 48) will not be considered as late payment.

Late-payment interest covers the period running from the day following the due date for payment (see above), up to and including the date of payment.

Late-payment interest is not considered for the purposes of calculating the final grant amount.

21.11.2 If the coordinator breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or the participation of the coordinator may be terminated (see Article 50).

Such breaches may also lead to any of the other measures described in Chapter 6.

## ARTICLE 22 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS

### 22.1 Checks, reviews and audits by the *Agency and the Commission*

#### 22.1.1 Right to carry out checks

The *Agency or the Commission* will — during the implementation of the action or afterwards — check the proper implementation of the action and compliance with the obligations under the Agreement, including assessing deliverables and reports.

For this purpose the *Agency or the Commission* may be assisted by external persons or bodies.

The *Agency or the Commission* may also request additional information in accordance with Article 17. The *Agency or the Commission* may request beneficiaries to provide such information to it directly.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

### 22.1.2 Right to carry out reviews

The *Agency or the Commission* may — during the implementation of the action or afterwards — carry out reviews on the proper implementation of the action (including assessment of deliverables and reports), compliance with the obligations under the Agreement and continued scientific or technological relevance of the action.

Reviews may be started **up to two years after the payment of the balance**. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the review is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

The *Agency or the Commission* may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The coordinator or beneficiary concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources). The *Agency or the Commission* may request beneficiaries to provide such information to it directly.

The coordinator or beneficiary concerned may be requested to participate in meetings, including with external experts.

For **on-the-spot** reviews, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the review findings, a '**review report**' will be drawn up.

The *Agency or the Commission* will formally notify the review report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations ('**contradictory review procedure**').

Reviews (including review reports) are in the language of the Agreement.

### 22.1.3 Right to carry out audits

The *Agency or the Commission* may — during the implementation of the action or afterwards — carry out audits on the proper implementation of the action and compliance with the obligations under the Agreement.

Audits may be started **up to two years after the payment of the balance**. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the audit is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

The *Agency or the Commission* may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The coordinator or beneficiary concerned must provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Agreement. The *Agency or the Commission* may request beneficiaries to provide such information to it directly.

For **on-the-spot** audits, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available.

Information provided must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the audit findings, a ‘**draft audit report**’ will be drawn up.

The *Agency or the Commission* will formally notify the draft audit report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations (‘**contradictory audit procedure**’). This period may be extended by the *Agency or the Commission* in justified cases.

The ‘**final audit report**’ will take into account observations by the coordinator or beneficiary concerned. The report will be formally notified to it.

Audits (including audit reports) are in the language of the Agreement.

The *Agency or the Commission* may also access the beneficiaries’ statutory records for the periodical assessment of unit costs or flat-rate amounts.

## **22.2 Investigations by the European Anti-Fraud Office (OLAF)**

Under Regulations No 883/2013<sup>15</sup> and No 2185/96<sup>16</sup> (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

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<sup>15</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.09.2013, p. 1).

<sup>16</sup> Council Regulation (Euratom, EC) No 2185/1996 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

### 22.3 Checks and audits by the European Court of Auditors (ECA)

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/2012<sup>17</sup>, the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out audits.

The ECA has the right of access for the purpose of checks and audits.

### 22.4 Checks, reviews, audits and investigations for international organisations

*Not applicable*

### 22.5 Consequences of findings in checks, reviews, audits and investigations — Extension of findings

#### 22.5.1 Findings in this grant

Findings in checks, reviews, audits or investigations carried out in the context of this grant may lead to the rejection of ineligible costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44) or to any of the other measures described in Chapter 6.

Rejection of costs or reduction of the grant after the payment of the balance will lead to a revised final grant amount (see Article 5.4).

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of Annex 1 (see Article 55).

Checks, reviews, audits or investigations that find systemic or recurrent errors, irregularities, fraud or breach of obligations may also lead to consequences in other EU or Euratom grants awarded under similar conditions (**‘extension of findings from this grant to other grants’**).

Moreover, findings arising from an OLAF investigation may lead to criminal prosecution under national law.

#### 22.5.2 Findings in other grants

The *Agency or the Commission* may extend findings from other grants to this grant (**‘extension of findings from other grants to this grant’**), if:

- (a) the beneficiary concerned is found, in other EU or Euratom grants awarded under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on this grant and
- (b) those findings are formally notified to the beneficiary concerned — together with the list of grants affected by the findings — no later than two years after the payment of the balance of this grant.

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<sup>17</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

The extension of findings may lead to the rejection of costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44), suspension of payments (see Article 48), suspension of the action implementation (see Article 49) or termination (see Article 50).

### 22.5.3 Procedure

The *Agency or the Commission* will formally notify the beneficiary concerned the systemic or recurrent errors and its intention to extend these audit findings, together with the list of grants affected.

22.5.3.1 If the findings concern **eligibility of costs**: the formal notification will include:

- (a) an invitation to submit observations on the list of grants affected by the findings;
- (b) the request to submit **revised financial statements** for all grants affected;
- (c) the **correction rate for extrapolation** established by the *Agency or the Commission* on the basis of the systemic or recurrent errors, to calculate the amounts to be rejected if the beneficiary concerned:
  - (i) considers that the submission of revised financial statements is not possible or practicable or
  - (ii) does not submit revised financial statements.

The beneficiary concerned has 90 days from receiving notification to submit observations, revised financial statements or to propose a duly substantiated **alternative correction method**. This period may be extended by the *Agency or the Commission* in justified cases.

The amounts to be rejected will be determined on the basis of the revised financial statements, subject to their approval.

If the *Agency or the Commission* does not receive any observations or revised financial statements, does not accept the observations or the proposed alternative correction method or does not approve the revised financial statements, it will formally notify the beneficiary concerned the application of the initially notified correction rate for extrapolation.

If the *Agency or the Commission* accepts the alternative correction method proposed by the beneficiary concerned, it will formally notify the application of the accepted alternative correction method.

22.5.3.2 If the findings concern **improper implementation** or a **breach of another obligation**: the formal notification will include:

- (a) an invitation to submit observations on the list of grants affected by the findings and
- (b) the flat-rate the *Agency or the Commission* intends to apply according to the principle of proportionality.

The beneficiary concerned has 90 days from receiving notification to submit observations or to propose a duly substantiated alternative flat-rate.

If the *Agency or the Commission* does not receive any observations or does not accept the observations or the proposed alternative flat-rate, it will formally notify the beneficiary concerned the application of the initially notified flat-rate.

If the *Agency or the Commission* accepts the alternative flat-rate proposed by the beneficiary concerned, it will formally notify the application of the accepted alternative flat-rate.

## **22.6 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, any insufficiently substantiated costs will be ineligible (see Article 6) and will be rejected (see Article 42).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION**

### **23.1 Right to evaluate the impact of the action**

The *Agency or the Commission* may carry out interim and final evaluations of the impact of the action measured against the objective of the *EU* programme.

Evaluations may be started during implementation of the action and up to *five* years after the payment of the balance. The evaluation is considered to start on the date of the formal notification to the coordinator or beneficiaries.

The *Agency or the Commission* may make these evaluations directly (using its own staff) or indirectly (using external bodies or persons it has authorised to do so).

The coordinator or beneficiaries must provide any information relevant to evaluate the impact of the action, including information in electronic format.

### **23.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the *Agency* may apply the measures described in Chapter 6.

## **SECTION 3 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND AND RESULTS**

## SUBSECTION 1 GENERAL

### ARTICLE 23a — MANAGEMENT OF INTELLECTUAL PROPERTY

#### 23a.1 Obligation to take measures to implement the Commission Recommendation on the management of intellectual property in knowledge transfer activities

Beneficiaries that are universities or other public research organisations must take measures to implement the principles set out in Points 1 and 2 of the Code of Practice annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities<sup>18</sup>.

This does not change the obligations set out in Subsections 2 and 3 of this Section.

The beneficiaries must ensure that researchers and third parties involved in the action are aware of them.

#### 23a.2 Consequences of non-compliance

If a beneficiary breaches its obligations under this Article, the *Agency* may apply any of the measures described in Chapter 6.

## SUBSECTION 2 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND

### ARTICLE 24 — AGREEMENT ON BACKGROUND

#### 24.1 Agreement on background

The beneficiaries must identify and agree (in writing) on the background for the action (**‘agreement on background’**).

**‘Background’** means any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:

- (a) is held by the beneficiaries before they acceded to the Agreement, and
- (b) is needed to implement the action or exploit the results.

#### 24.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

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<sup>18</sup> Commission Recommendation C (2008) 1329 of 10.4.2008 on the management of intellectual property in knowledge transfer activities and the Code of Practice for universities and other public research institutions attached to this recommendation.

## **ARTICLE 25 — ACCESS RIGHTS TO BACKGROUND**

### **25.1 Exercise of access rights — Waiving of access rights — No sub-licensing**

To exercise access rights, this must first be requested in writing (‘**request for access**’).

‘**Access rights**’ means rights to use results or background under the terms and conditions laid down in this Agreement.

Waivers of access rights are not valid unless in writing.

Unless agreed otherwise, access rights do not include the right to sub-license.

### **25.2 Access rights for other beneficiaries, for implementing their own tasks under the action**

The beneficiaries must give each other access — on a royalty-free basis — to background needed to implement their own tasks under the action, unless the beneficiary that holds the background has — before acceding to the Agreement —:

- (a) informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel), or
- (b) agreed with the other beneficiaries that access would not be on a royalty-free basis.

### **25.3 Access rights for other beneficiaries, for exploiting their own results**

The beneficiaries must give each other access — under fair and reasonable conditions — to background needed for exploiting their own results, unless the beneficiary that holds the background has — before acceding to the Agreement — informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel).

‘**Fair and reasonable conditions**’ means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

### **25.4 Access rights for affiliated entities**

Unless otherwise agreed in the consortium agreement, access to background must also be given — under fair and reasonable conditions (see above; Article 25.3) and unless it is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel) — to affiliated entities<sup>19</sup> established in an EU Member State or ‘**associated country**’<sup>20</sup>, if this is needed to exploit the results generated by the beneficiaries to which they are affiliated.

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<sup>19</sup> For the definition, see ‘affiliated entity’ footnote (Article 14.1).

Unless agreed otherwise (see above; Article 25.1), the affiliated entity concerned must make the request directly to the beneficiary that holds the background.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

### **25.5 Access rights for third parties**

*Not applicable*

### **25.6 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **SUBSECTION 3 RIGHTS AND OBLIGATIONS RELATED TO RESULTS**

### **ARTICLE 26 — OWNERSHIP OF RESULTS**

#### **26.1 Ownership by the beneficiary that generates the results**

Results are owned by the beneficiary that generates them.

‘**Results**’ means any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, as well as any rights attached to it, including intellectual property rights.

#### **26.2 Joint ownership by several beneficiaries**

Two or more beneficiaries own results jointly if:

- (a) they have jointly generated them and
- (b) it is not possible to:
  - (i) establish the respective contribution of each beneficiary, or
  - (ii) separate them for the purpose of applying for, obtaining or maintaining their protection (see Article 27).

The joint owners must agree (in writing) on the allocation and terms of exercise of their joint ownership (**‘joint ownership agreement’**), to ensure compliance with their obligations under this Agreement.

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<sup>20</sup> For the definition, see Article 2.1(3) of the Rules for Participation Regulation No 1290/2013: ‘**associated country**’ means a third country which is party to an international agreement with the Union, as identified in *Article 7 of Horizon 2020 Framework Programme Regulation No 1291/2013*. *Article 7 sets out the conditions for association of non-EU countries to Horizon 2020*.

Unless otherwise agreed in the joint ownership agreement, each joint owner may grant non-exclusive licences to third parties to exploit jointly-owned results (without any right to sub-license), if the other joint owners are given:

- (a) at least 45 days advance notice and
- (b) fair and reasonable compensation.

Once the results have been generated, joint owners may agree (in writing) to apply another regime than joint ownership (such as, for instance, transfer to a single owner (see Article 30) with access rights for the others).

### **26.3 Rights of third parties (including personnel)**

If third parties (including personnel) may claim rights to the results, the beneficiary concerned must ensure that it complies with its obligations under the Agreement.

If a third party generates results, the beneficiary concerned must obtain all necessary rights (transfer, licences or other) from the third party, in order to be able to respect its obligations as if those results were generated by the beneficiary itself.

If obtaining the rights is impossible, the beneficiary must refrain from using the third party to generate the results.

### **26.4 Agency ownership, to protect results**

26.4.1 *The Agency* may — with the consent of the beneficiary concerned — assume ownership of results to protect them, if a beneficiary intends — up to four years after the period set out in Article 3 — to disseminate its results without protecting them, except in any of the following cases:

- (a) the lack of protection is because protecting the results is not possible, reasonable or justified (given the circumstances);
- (b) the lack of protection is because there is a lack of potential for commercial or industrial exploitation, or
- (c) the beneficiary intends to transfer the results to another beneficiary or third party established in an EU Member State or associated country, which will protect them.

Before the results are disseminated and unless any of the cases above under Points (a), (b) or (c) applies, the beneficiary must formally notify the *Agency* and at the same time inform it of any reasons for refusing consent. The beneficiary may refuse consent only if it can show that its legitimate interests would suffer significant harm.

If the *Agency* decides to assume ownership, it will formally notify the beneficiary concerned within 45 days of receiving notification.

No dissemination relating to these results may before the end of this period or, if the *Agency* takes a positive decision, until it has taken the necessary steps to protect the results.

26.4.2 *The Agency* may — with the consent of the beneficiary concerned — assume ownership of results to protect them, if a beneficiary intends — up to four years after the period set out in Article 3 — to stop protecting them or not to seek an extension of protection, except in any of the following cases:

- (a) the protection is stopped because of a lack of potential for commercial or industrial exploitation;
- (b) an extension would not be justified given the circumstances.

A beneficiary that intends to stop protecting results or not seek an extension must — unless any of the cases above under Points (a) or (b) applies — formally notify the *Agency* at least 60 days before the protection lapses or its extension is no longer possible and at the same time inform it of any reasons for refusing consent. The beneficiary may refuse consent only if it can show that its legitimate interests would suffer significant harm.

If the *Agency* decides to assume ownership, it will formally notify the beneficiary concerned within 45 days of receiving notification.

## 26.5 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to the any of the other measures described in Chapter 6.

## ARTICLE 27 — PROTECTION OF RESULTS — VISIBILITY OF EU FUNDING

### 27.1 Obligation to protect the results

Each beneficiary must examine the possibility of protecting its results and must adequately protect them — for an appropriate period and with appropriate territorial coverage — if:

- (a) the results can reasonably be expected to be commercially or industrially exploited and
- (b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own legitimate interests and the legitimate interests (especially commercial) of the other beneficiaries.

### 27.2 *Agency* ownership, to protect the results

If a beneficiary intends not to protect its results, to stop protecting them or not seek an extension of protection, *the Agency* may — under certain conditions (see Article 26.4) — assume ownership to ensure their (continued) protection.

### 27.3 Information on EU funding

Applications for protection of results (including patent applications) filed by or on behalf of a beneficiary must — unless the *Agency* requests or agrees otherwise or unless it is impossible — include the following:

*“The project leading to this application has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 689157”.*

## 27.4 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such a breach may also lead to any of the other measures described in Chapter 6.

## ARTICLE 28 — EXPLOITATION OF RESULTS

### 28.1 Obligation to exploit the results

Each beneficiary must — up to four years after the period set out in Article 3 — take measures aiming to ensure ‘**exploitation**’ of its results (either directly or indirectly, in particular through transfer or licensing; see Article 30) by:

- (a) using them in further research activities (outside the action);
- (b) developing, creating or marketing a product or process;
- (c) creating and providing a service, or
- (d) using them in standardisation activities.

This does not change the security obligations in Article 37, which still apply.

### 28.2 Results that could contribute to European or international standards — Information on EU funding

If results are incorporated in a standard, the beneficiary concerned must — unless the *Agency* requests or agrees otherwise or unless it is impossible — ask the standardisation body to include the following statement in (information related to) the standard:

*“Results incorporated in this standard received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 689157”.*

### 28.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced in accordance with Article 43.

Such a breach may also lead to any of the other measures described in Chapter 6.

## ARTICLE 29 — DISSEMINATION OF RESULTS — OPEN ACCESS — VISIBILITY OF EU FUNDING

### 29.1 Obligation to disseminate results

Unless it goes against their legitimate interests, each beneficiary must — as soon as possible — ‘**disseminate**’ its results by disclosing them to the public by appropriate means (other than those resulting from protecting or exploiting the results), including in scientific publications (in any medium).

This does not change the obligation to protect results in Article 27, the confidentiality obligations in Article 36, the security obligations in Article 37 or the obligations to protect personal data in Article 39, all of which still apply.

A beneficiary that intends to disseminate its results must give advance notice to the other beneficiaries of — unless agreed otherwise — at least 45 days, together with sufficient information on the results it will disseminate.

Any other beneficiary may object within — unless agreed otherwise — 30 days of receiving notification, if it can show that its legitimate interests in relation to the results or background would be significantly harmed. In such cases, the dissemination may not take place unless appropriate steps are taken to safeguard these legitimate interests.

If a beneficiary intends not to protect its results, it may — under certain conditions (see Article 26.4.1) — need to formally notify the *Agency* before dissemination takes place.

## 29.2 Open access to scientific publications

Each beneficiary must ensure open access (free of charge online access for any user) to all peer-reviewed scientific publications relating to its results.

In particular, it must:

- (a) as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications;

Moreover, the beneficiary must aim to deposit at the same time the research data needed to validate the results presented in the deposited scientific publications.

- (b) ensure open access to the deposited publication — via the repository — at the latest:
  - (i) on publication, if an electronic version is available for free via the publisher, or
  - (ii) within six months of publication (twelve months for publications in the social sciences and humanities) in any other case.
- (c) ensure open access — via the repository — to the bibliographic metadata that identify the deposited publication.

The bibliographic metadata must be in a standard format and must include all of the following:

- the terms “*European Union (EU)*” and “*Horizon 2020*”;
- the name of the action, acronym and grant number;
- the publication date, and length of embargo period if applicable, and
- a persistent identifier.

### 29.3 Open access to research data

Regarding the digital research data generated in the action (**'data'**), the beneficiaries must:

- (a) deposit in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate — free of charge for any user — the following:
  - (i) the data, including associated metadata, needed to validate the results presented in scientific publications as soon as possible;
  - (ii) other data, including associated metadata, as specified and within the deadlines laid down in the '**data management plan**' (see Annex 1);
- (b) provide information — via the repository — about tools and instruments at the disposal of the beneficiaries and necessary for validating the results (and — where possible — provide the tools and instruments themselves).

This does not change the obligation to protect results in Article 27, the confidentiality obligations in Article 36, the security obligations in Article 37 or the obligations to protect personal data in Article 39, all of which still apply.

As an exception, the beneficiaries do not have to ensure open access to specific parts of their research data if the achievement of the action's main objective, as described in Annex 1, would be jeopardised by making those specific parts of the research data openly accessible. In this case, the data management plan must contain the reasons for not giving access.

### 29.4 Information on EU funding — Obligation and right to use the EU emblem

Unless the Agency requests or agrees otherwise or unless it is impossible, any dissemination of results (in any form, including electronic) must:

- (a) display the EU emblem and
- (b) include the following text:

*“This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 689157”.*

When displayed together with another logo, the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the beneficiaries may use the EU emblem without first obtaining approval from the Agency.

This does not however give them the right to exclusive use.

Moreover, they may not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

### 29.5 Disclaimer excluding Agency responsibility

Any dissemination of results must indicate that it reflects only the author's view and that the Agency is not responsible for any use that may be made of the information it contains.

## **29.6 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such a breach may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 30 — TRANSFER AND LICENSING OF RESULTS**

### **30.1 Transfer of ownership**

Each beneficiary may transfer ownership of its results.

It must however ensure that its obligations under Articles 26.2, 26.4, 27, 28, 29, 30 and 31 also apply to the new owner and that this owner has the obligation to pass them on in any subsequent transfer.

This does not change the security obligations in Article 37, which still apply.

Unless agreed otherwise (in writing) for specifically-identified third parties or unless impossible under applicable EU and national laws on mergers and acquisitions, a beneficiary that intends to transfer ownership of results must give at least 45 days advance notice (or less if agreed in writing) to the other beneficiaries that still have (or still may request) access rights to the results. This notification must include sufficient information on the new owner to enable any beneficiary concerned to assess the effects on its access rights.

Unless agreed otherwise (in writing) for specifically-identified third parties, any other beneficiary may object within 30 days of receiving notification (or less if agreed in writing), if it can show that the transfer would adversely affect its access rights. In this case, the transfer may not take place until agreement has been reached between the beneficiaries concerned.

### **30.2 Granting licenses**

Each beneficiary may grant licences to its results (or otherwise give the right to exploit them), if:

- (a) this does not impede the rights under Article 31 and
- (b) *not applicable*.

In addition to Points (a) and (b), exclusive licences for results may be granted only if all the other beneficiaries concerned have waived their access rights (see Article 31.1).

This does not change the dissemination obligations in Article 29 or security obligations in Article 37, which still apply.

### **30.3 Agency right to object to transfers or licensing**

*Not applicable*

### **30.4 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such a breach may also lead to any of the other measures described in Chapter 6.

## **ARTICLE 31 — ACCESS RIGHTS TO RESULTS**

### **31.1 Exercise of access rights — Waiving of access rights — No sub-licensing**

The conditions set out in Article 25.1 apply.

The obligations set out in this Article do not change the security obligations in Article 37, which still apply.

### **31.2 Access rights for other beneficiaries, for implementing their own tasks under the action**

The beneficiaries must give each other access — on a royalty-free basis — to results needed for implementing their own tasks under the action.

### **31.3 Access rights for other beneficiaries, for exploiting their own results**

The beneficiaries must give each other — under fair and reasonable conditions (see Article 25.3) — access to results needed for exploiting their own results.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

### **31.4 Access rights of affiliated entities**

Unless agreed otherwise in the consortium agreement, access to results must also be given — under fair and reasonable conditions (Article 25.3) — to affiliated entities established in an EU Member State or associated country, if this is needed for those entities to exploit the results generated by the beneficiaries to which they are affiliated.

Unless agreed otherwise (see above; Article 31.1), the affiliated entity concerned must make any such request directly to the beneficiary that owns the results.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

### **31.5 Access rights for the EU institutions, bodies, offices or agencies and EU Member States**

*The beneficiaries must give access to their results — on a royalty-free basis — to EU institutions, bodies, offices or agencies, for developing, implementing or monitoring EU policies or programmes.*

*Such access rights are limited to non-commercial and non-competitive use.*

*This does not change the right to use any material, document or information received from the beneficiaries for communication and publicising activities (see Article 38.2).*

### **31.6 Access rights for third parties**

*Not applicable*

### **31.7 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## **SECTION 4 OTHER RIGHTS AND OBLIGATIONS**

### **ARTICLE 32 — RECRUITMENT AND WORKING CONDITIONS FOR RESEARCHERS**

#### **32.1 Obligation to take measures to implement the European Charter for Researchers and Code of Conduct for the Recruitment of Researchers**

The beneficiaries must take all measures to implement the principles set out in the Commission Recommendation on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers<sup>22</sup>, in particular regarding:

- working conditions;
- transparent recruitment processes based on merit, and
- career development.

The beneficiaries must ensure that researchers and third parties involved in the action are aware of them.

#### **32.2 Consequences of non-compliance**

If a beneficiary breaches its obligations under this Article, the *Agency* may apply any of the measures described in Chapter 6.

### **ARTICLE 33 — GENDER EQUALITY**

#### **33.1 Obligation to aim for gender equality**

The beneficiaries must take all measures to promote equal opportunities between men and women in the implementation of the action. They must aim, to the extent possible, for a gender balance at all levels of personnel assigned to the action, including at supervisory and managerial level.

#### **33.2 Consequences of non-compliance**

If a beneficiary breaches its obligations under this Article, the *Agency* may apply any of the measures described in Chapter 6.

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<sup>22</sup> Commission Recommendation 2005/251/EC of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers (OJ L 75, 22.3.2005, p. 67).

## ARTICLE 34 — ETHICS

### 34.1 Obligation to comply with ethical principles

The beneficiaries must carry out the action in compliance with:

- (a) ethical principles (including the highest standards of research integrity — as set out, for instance, in the European Code of Conduct for Research Integrity<sup>23</sup> — and including, in particular, avoiding fabrication, falsification, plagiarism or other research misconduct) and
- (b) applicable international, EU and national law.

Funding will not be granted for activities carried out outside the EU if they are prohibited in all Member States.

The beneficiaries must ensure that the activities under the action have an exclusive focus on civil applications.

The beneficiaries must ensure that the activities under the action do not:

- (a) aim at human cloning for reproductive purposes;
- (b) intend to modify the genetic heritage of human beings which could make such changes heritable (with the exception of research relating to cancer treatment of the gonads, which may be financed), or
- (c) intend to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer.

### 34.2 Activities raising ethical issues

Activities raising ethical issues must comply with the ‘**ethics requirements**’ set out in Annex 1.

Before the beginning of an activity raising an ethical issue, the coordinator must submit (see Article 52) to the *Agency* copy of:

- (a) any ethics committee opinion required under national law and
- (b) any notification or authorisation for activities raising ethical issues required under national law.

If these documents are not in English, the coordinator must also submit an English summary of the submitted opinions, notifications and authorisations (containing, if available, the conclusions of the committee or authority concerned).

If these documents are specifically requested for the action, the request must contain an explicit reference to the action title. The coordinator must submit a declaration by each beneficiary concerned that all the submitted documents cover the action tasks.

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<sup>23</sup> The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation) of March 2011.

[http://www.esf.org/fileadmin/Public\\_documents/Publications/Code\\_Conduct\\_ResearchIntegrity.pdf](http://www.esf.org/fileadmin/Public_documents/Publications/Code_Conduct_ResearchIntegrity.pdf)

### 34.3 Activities involving human embryos or human embryonic stem cells

Activities involving research on human embryos or human embryonic stem cells may be carried out only if:

- they are set out in Annex 1 or
- the coordinator has obtained explicit approval (in writing) from the *Agency* (see Article 52).

### 34.4 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or participation of the beneficiary may be terminated (see Article 50).

Such breaches may also lead to any of the other measures described in Chapter 6.

## ARTICLE 35 — CONFLICT OF INTERESTS

### 35.1 Obligation to avoid a conflict of interests

The beneficiaries must take all measures to prevent any situation where the impartial and objective implementation of the action is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (**‘conflict of interests’**).

They must formally notify to the *Agency* without delay any situation constituting or likely to lead to a conflict of interests and immediately take all the necessary steps to rectify this situation.

The *Agency* may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

### 35.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or participation of the beneficiary may be terminated (see Article 50).

Such breaches may also lead to any of the other measures described in Chapter 6.

## ARTICLE 36 — CONFIDENTIALITY

### 36.1 General obligation to maintain confidentiality

During implementation of the action and for four years after the period set out in Article 3, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed (**‘confidential information’**).

If a beneficiary requests, the *Agency* may agree to keep such information confidential for an additional period beyond the initial four years.

If information has been identified as confidential only orally, it will be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

Unless otherwise agreed between the parties, they may use confidential information only to implement the Agreement.

The beneficiaries may disclose confidential information to their personnel or third parties involved in the action only if they:

- (a) need to know to implement the Agreement and
- (b) are bound by an obligation of confidentiality.

This does not change the security obligations in Article 37, which still apply.

The *Agency* may disclose confidential information to its staff, other EU institutions and bodies or third parties, if:

- (a) this is necessary to implement the Agreement or safeguard the EU's financial interests and
- (b) the recipients of the information are bound by an obligation of confidentiality.

Under the conditions set out in Article 4 of the Rules for Participation Regulation No 1290/2013<sup>24</sup>, the Commission must moreover make available information on the results to other EU institutions, bodies, offices or agencies as well as Member States or associated countries.

The confidentiality obligations no longer apply if:

- (a) the disclosing party agrees to release the other party;
- (b) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;
- (c) the recipient proves that the information was developed without the use of confidential information;
- (d) the information becomes generally and publicly available, without breaching any confidentiality obligation, or
- (e) the disclosure of the information is required by EU or national law.

### **36.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

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<sup>24</sup> Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" (OJ L 347, 20.12.2013 p.81).

## **ARTICLE 37 — SECURITY-RELATED OBLIGATIONS**

### **37.1 Results with a security recommendation**

*Not applicable*

### **37.2 Classified results**

*Not applicable*

### **37.3 Activities involving dual-use goods or dangerous materials and substances**

*Not applicable*

### **37.4 Consequences of non-compliance**

*Not applicable*

## **ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING**

### **38.1 Communication activities by beneficiaries**

#### **38.1.1 Obligation to promote the action and its results**

The beneficiaries must promote the action and its results, by providing targeted information to multiple audiences (including the media and the public) in a strategic and effective manner.

This does not change the dissemination obligations in Article 29, the confidentiality obligations in Article 36 or the security obligations in Article 37, all of which still apply.

Before engaging in a communication activity expected to have a major media impact, the beneficiaries must inform the *Agency* (see Article 52).

#### **38.1.2 Information on EU funding — Obligation and right to use the EU emblem**

Unless the *Agency* requests or agrees otherwise or unless it is impossible, any communication activity related to the action (including in electronic form, via social media, etc.) and any infrastructure, equipment and major results funded by the grant must:

(a) display the EU emblem and

(b) include the following text:

For communication activities: *“This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 689157”.*

For infrastructure, equipment and major results: *“This [infrastructure][equipment][insert type of result] is part of a project that has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 689157”.*

When displayed together with another logo, the EU emblem must have appropriate prominence.

For the purposes of their obligations under this Article, the beneficiaries may use the EU emblem without first obtaining approval from the *Agency*.

This does not, however, give them the right to exclusive use.

Moreover, they may not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

### **38.1.3 Disclaimer excluding *Agency* responsibility**

Any communication activity related to the action must indicate that it reflects only the author's view and that the *Agency* is not responsible for any use that may be made of the information it contains.

## **38.2 Communication activities by the *Agency***

### **38.2.1 Right to use beneficiaries' materials, documents or information**

The *Agency* may use, for its communication and publicising activities, information relating to the action, documents notably summaries for publication and public deliverables as well as any other material, such as pictures or audio-visual material that it receives from any beneficiary (including in electronic form).

This does not change the confidentiality obligations in Article 36 and the security obligations in Article 37, all of which still apply.

However, if the *Agency's* use of these materials, documents or information would risk compromising legitimate interests, the beneficiary concerned may request the *Agency* not to use it (see Article 52).

The right to use a beneficiary's materials, documents and information includes:

- (a) **use for its own purposes** (in particular, making them available to persons working for the *Agency* or any other EU institution, body, office or agency or body or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);
- (b) **distribution to the public** (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);
- (c) **editing or redrafting** for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);
- (d) **translation**;
- (e) giving **access in response to individual requests** under Regulation No 1049/2001<sup>25</sup>, without the right to reproduce or exploit;

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<sup>25</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

- (f) **storage** in paper, electronic or other form;
- (g) **archiving**, in line with applicable document-management rules, and
- (h) the right to authorise **third parties** to act on its behalf or sub-license the modes of use set out in Points (b),(c),(d) and (f) to third parties if needed for the communication and publicising activities of the *Agency*.

If the right of use is subject to rights of a third party (including personnel of the beneficiary), the beneficiary must ensure that it complies with its obligations under this Agreement (in particular, by obtaining the necessary approval from the third parties concerned).

Where applicable (and if provided by the beneficiaries), the *Agency* will insert the following information:

“© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the *Executive Agency for Small and Medium-sized Enterprises (EASME)* under conditions.”

### 38.3 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

Such breaches may also lead to any of the other measures described in Chapter 6.

## ARTICLE 39 — PROCESSING OF PERSONAL DATA

### 39.1 Processing of personal data by the *Agency and the Commission*

Any personal data under the Agreement will be processed by the *Agency or the Commission* under Regulation No 45/2001<sup>26</sup> and according to the ‘notifications of the processing operations’ to the Data Protection Officer (DPO) of the *Agency or the Commission* (publicly accessible in the DPO register).

Such data will be processed by the ‘**data controller**’ of the *Agency or the Commission* for the purposes of implementing, managing and monitoring the Agreement or protecting the financial interests of the EU or Euratom (including checks, reviews, audits and investigations; see Article 22).

The persons whose personal data are processed have the right to access and correct their own personal data. For this purpose, they must send any queries about the processing of their personal data to the data controller, via the contact point indicated in the ‘service specific privacy statement(s) (SSPS)’ that are published on the *Agency and the Commission* websites.

They also have the right to have recourse at any time to the European Data Protection Supervisor (EDPS).

<sup>26</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.01.2001, p. 1).

### **39.2 Processing of personal data by the beneficiaries**

The beneficiaries must process personal data under the Agreement in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).

The beneficiaries may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring the Agreement.

The beneficiaries must inform the personnel whose personal data are collected and processed by the *Agency or the Commission*. For this purpose, they must provide them with the service specific privacy statement (SSPS) (see above), before transmitting their data to the *Agency or the Commission*.

### **39.3 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under Article 39.2, the *Agency* may apply any of the measures described in Chapter 6.

## **ARTICLE 40 — ASSIGNMENTS OF CLAIMS FOR PAYMENT AGAINST THE *AGENCY***

The beneficiaries may not assign any of their claims for payment against the *Agency* to any third party, except if approved by the *Agency* on the basis of a reasoned, written request by the coordinator (on behalf of the beneficiary concerned).

If the *Agency* has not accepted the assignment or the terms of it are not observed, the assignment will have no effect on it.

In no circumstances will an assignment release the beneficiaries from their obligations towards the *Agency*.

## **CHAPTER 5 DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES**

### **ARTICLE 41 — DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES — RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES — RELATIONSHIP WITH PARTNERS OF A JOINT ACTION**

#### **41.1 Roles and responsibilities towards the *Agency***

The beneficiaries have full responsibility for implementing the action and complying with the Agreement.

The beneficiaries are jointly and severally liable for the **technical implementation** of the action as described in Annex 1. If a beneficiary fails to implement its part of the action, the other beneficiaries become responsible for implementing this part (without being entitled to any additional EU funding for doing so), unless the *Agency* expressly relieves them of this obligation.

The **financial responsibility** of each beneficiary is governed by Articles 44, 45 and 46.

#### **41.2 Internal division of roles and responsibilities**

The internal roles and responsibilities of the beneficiaries are divided as follows:

(a) Each **beneficiary** must:

- (i) keep information stored in the 'Beneficiary Register' (via the electronic exchange system) up to date (see Article 17);
- (ii) inform the coordinator immediately of any events or circumstances likely to affect significantly or delay the implementation of the action (see Article 17);
- (iii) submit to the coordinator in good time:
  - individual financial statements for itself *and its linked third parties* and, if required, certificates on the financial statements (see Article 20);
  - the data needed to draw up the technical reports (see Article 20);
  - ethics committee opinions and notifications or authorisations for activities raising ethical issues (see Article 34);
  - any other documents or information required by the *Agency or the Commission* under the Agreement, unless the Agreement requires the beneficiary to submit this information directly to the *Agency or the Commission*.

(b) The **coordinator** must:

- (i) monitor that the action is implemented properly (see Article 7);
- (ii) act as the intermediary for all communications between the beneficiaries and the *Agency* (in particular, providing the *Agency* with the information described in Article 17), unless the Agreement specifies otherwise;
- (iii) request and review any documents or information required by the *Agency* and verify their completeness and correctness before passing them on to the *Agency*;
- (iv) submit the deliverables and reports to the *Agency* (see Articles 19 and 20);
- (v) ensure that all payments are made to the other beneficiaries without unjustified delay (see Article 21);
- (vi) inform the *Agency* of the amounts paid to each beneficiary, when required under the Agreement (see Articles 44 and 50) or requested by the *Agency*.

The coordinator may not delegate the above-mentioned tasks to any other beneficiary or subcontract them to any third party.

### 41.3 Internal arrangements between beneficiaries — Consortium agreement

*The beneficiaries must have internal arrangements regarding their operation and co-ordination to ensure that the action is implemented properly. These internal arrangements must be set out in a written 'consortium agreement' between the beneficiaries, which may cover:*

- *internal organisation of the consortium;*
- *management of access to the electronic exchange system;*
- *distribution of EU funding;*
- *additional rules on rights and obligations related to background and results (including whether access rights remain or not, if a beneficiary is in breach of its obligations) (see Section 3 of Chapter 4);*
- *settlement of internal disputes;*
- *liability, indemnification and confidentiality arrangements between the beneficiaries.*

*The consortium agreement must not contain any provision contrary to the Agreement.*

#### **41.4 Relationship with complementary beneficiaries — Collaboration agreement**

*Not applicable*

#### **41.5 Relationship with partners of a joint action — Coordination agreement**

*Not applicable*

### **CHAPTER 6 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — PENALTIES — DAMAGES — SUSPENSION — TERMINATION — FORCE MAJEURE**

#### **SECTION 1 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — PENALTIES**

#### **ARTICLE 42 — REJECTION OF INELIGIBLE COSTS**

##### **42.1 Conditions**

42.1.1 The *Agency* will — at the time of an **interim payment, at the payment of the balance or afterwards** — reject any costs which are ineligible (see Article 6), in particular following checks, reviews, audits or investigations (see Article 22).

42.1.2 The rejection may also be based on the **extension of findings from other grants to this grant**, under the conditions set out in Article 22.5.2.

##### **42.2 Ineligible costs to be rejected — Calculation — Procedure**

Ineligible costs will be rejected in full.

If the *Agency* rejects costs **without reduction of the grant** (see Article 43) or **recovery of undue amounts** (see Article 44), it will formally notify the coordinator or beneficiary concerned the rejection of costs, the amounts and the reasons why (if applicable, together with the notification of amounts

due; see Article 21.5). The coordinator or beneficiary concerned may — within 30 days of receiving notification — formally notify the *Agency* of its disagreement and the reasons why.

If the *Agency* rejects costs **with reduction of the grant or recovery of undue amounts**, it will formally notify the rejection in the ‘**pre-information letter**’ on reduction or recovery set out in Articles 43 and 44.

### 42.3 Effects

If the *Agency* rejects costs at the time of an **interim payment or the payment of the balance**, it will deduct them from the total eligible costs declared, for the action, in the periodic or final summary financial statement (see Articles 20.3 and 20.4). It will then calculate the interim payment or payment of the balance as set out in Articles 21.3 or 21.4.

If the *Agency* — **after an interim payment but before the payment of the balance** — rejects costs declared in a periodic summary financial statement, it will deduct them from the total eligible costs declared, for the action, in the next periodic summary financial statement or in the final summary financial statement. It will then calculate the interim payment or payment of the balance as set out in Articles 21.3 or 21.4.

If the *Agency* rejects costs **after the payment of the balance**, it will deduct the amount rejected from the total eligible costs declared, by the beneficiary, in the final summary financial statement. It will then calculate the revised final grant amount as set out in Article 5.4.

## ARTICLE 43 — REDUCTION OF THE GRANT

### 43.1 Conditions

43.1.1 The *Agency* may — **at the payment of the balance or afterwards** — reduce the maximum grant amount (see Article 5.1), if the action has not been implemented properly as described in Annex 1 or another obligation under the Agreement has been breached.

43.1.2 The *Agency* may also reduce the maximum grant amount on the basis of the **extension of findings from other grants to this grant**, under the conditions set out in Article 22.5.2.

### 43.2 Amount to be reduced — Calculation — Procedure

The amount of the reduction will be proportionate to the improper implementation of the action or to the seriousness of the breach.

Before reduction of the grant, the *Agency* will formally notify a ‘**pre-information letter**’ to the coordinator or beneficiary concerned:

- informing it of its intention to reduce the grant, the amount it intends to reduce and the reasons why and
- inviting it to submit observations within 30 days of receiving notification

If the *Agency* does not receive any observations or decides to pursue reduction despite the observations it has received, it will formally notify **confirmation** of the reduction (if applicable, together with the notification of amounts due; see Article 21).

### 43.3 Effects

If the *Agency* reduces the grant at the time of **the payment of the balance**, it will calculate the reduced grant amount for the action and then determine the amount due as payment of the balance (see Articles 5.3.4 and 21.4).

If the *Agency* reduces the grant **after the payment of the balance**, it will calculate the revised final grant amount for the beneficiary concerned (see Article 5.4). If the revised final grant amount for the beneficiary concerned is lower than its share of the final grant amount, the *Agency* will recover the difference (see Article 44).

## ARTICLE 44 — RECOVERY OF UNDUE AMOUNTS

### 44.1 Amount to be recovered — Calculation — Procedure

The *Agency* will — after **termination of the participation of a beneficiary, at the payment of the balance or afterwards** — claim back any amount that was paid but is not due under the Agreement.

Each beneficiary's financial responsibility in case of recovery is limited to its own debt (*including undue amounts paid by the Agency for costs declared by its linked third parties*), except for the amount retained for the Guarantee Fund (see Article 21.4).

#### 44.1.1 Recovery after termination of a beneficiary's participation

If recovery takes place after termination of a beneficiary's participation (including the coordinator), the *Agency* will claim back the undue amount from the beneficiary concerned, by formally notifying it a debit note (see Article 50.2 and 50.3). This note will specify the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the *Agency or the Commission* will **recover** the amount:

- (a) by '**offsetting**' it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the *Agency*, the Commission or another executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *Agency* may offset before the payment date specified in the debit note;

- (b) *not applicable*;

- (c) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial regulation No 966/2012.

If payment is not made by the date specified in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the *Agency or the Commission* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC<sup>27</sup> applies.

#### 44.1.2 Recovery at payment of the balance

If the payment of the balance takes the form of a recovery (see Article 21.4), the *Agency* will formally notify a ‘**pre-information letter**’ to the coordinator:

- informing it of its intention to recover, the amount due as the balance and the reasons why;
- specifying that it intends to deduct the amount to be recovered from the amount retained for the Guarantee Fund;
- requesting the coordinator to submit a report on the distribution of payments to the beneficiaries within 30 days of receiving notification, and
- inviting the coordinator to submit observations within 30 days of receiving notification.

If no observations are submitted or the *Agency* decides to pursue recovery despite the observations it has received, it will **confirm recovery** (together with the notification of amounts due; see Article 21.5) and:

- pay the difference between the amount to be recovered and the amount retained for the Guarantee Fund, **if the difference is positive** or
- formally notify to the coordinator a **debit note** for the difference between the amount to be recovered and the amount retained for the Guarantee Fund, **if the difference is negative**. This note will also specify the terms and the date for payment.

If the coordinator does not repay the *Agency* by the date in the debit note and has not submitted the report on the distribution of payments: the *Agency* or the Commission will **recover** the amount set out in the debit note from the coordinator (see below).

If the coordinator does not repay the *Agency* by the date in the debit note, but has submitted the report on the distribution of payments: the *Agency* will:

- (a) identify the beneficiaries for which the amount calculated as follows is negative:

$\{\{\{\text{beneficiary's costs declared in the final summary financial statement and approved by the } \}  
*Agency* multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned$

*plus*

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<sup>27</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 05.12.2007, p. 1).

*its linked third parties' costs declared in the final summary financial statement and approved by the Agency multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned}*

divided by

the EU contribution for the action calculated according to Article 5.3.1 }

multiplied by

the final grant amount (see Article 5.3)},

minus

{pre-financing and interim payments received by the beneficiary} }.

- (b) formally notify to each beneficiary identified according to point (a) a **debit note** specifying the terms and date for payment. The amount of the debit note is calculated as follows:

{ {amount calculated according to point (a) for the beneficiary concerned

divided by

the sum of the amounts calculated according to point (a) for all the beneficiaries identified according to point (a)}

multiplied by

the amount set out in the debit note formally notified to the coordinator}.

If payment is not made by the date specified in the debit note, the *Agency* will **recover** the amount:

- (a) by '**offsetting**' it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the *Agency*, the Commission or another executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *Agency* may offset before the payment date specified in the debit note;

- (b) by **drawing on the Guarantee Fund**. The *Agency* or the Commission will formally notify the beneficiary concerned the debit note on behalf of the Guarantee Fund and recover the amount:

(i) *not applicable*;

(ii) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the

payment date in the debit note, up to and including the date the *Agency or the Commission* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

#### 44.1.3 Recovery of amounts after payment of the balance

If, for a beneficiary, the revised final grant amount (see Article 5.4) is lower than its share of the final grant amount, it must repay the difference to the *Agency*.

The beneficiary's share of the final grant amount is calculated as follows:

{ {beneficiary's costs declared in the final summary financial statement and approved by the *Agency* multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned

*plus*

*its linked third parties' costs declared in the final summary financial statement and approved by the Agency multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned*

divided by

the EU contribution for the action calculated according to Article 5.3.1 }

multiplied by

the final grant amount (see Article 5.3) }.

If the coordinator has not distributed amounts received (see Article 21.7), the *Agency* will also recover these amounts.

The *Agency* will formally notify a **pre-information letter** to the beneficiary concerned:

- informing it of its intention to recover, the due amount and the reasons why and
- inviting it to submit observations within 30 days of receiving notification.

If no observations are submitted or the *Agency* decides to pursue recovery despite the observations it has received, it will **confirm** the amount to be recovered and formally notify to the beneficiary concerned a **debit note**. This note will also specify the terms and the date for payment.

If payment is not made by the date specified in the debit note, the *Agency* will **recover** the amount:

- (a) by '**offsetting**' it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the *Agency, the Commission* or *another* executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *Agency* may offset before the payment date specified in the debit note;

(b) by **drawing on the Guarantee Fund**. The *Agency or the Commission* will formally notify the beneficiary concerned the debit note on behalf of the Guarantee Fund and recover the amount:

(i) *not applicable*;

(ii) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the date for payment in the debit note, up to and including the date the *Agency or the Commission* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

## ARTICLE 45 — ADMINISTRATIVE AND FINANCIAL PENALTIES

### 45.1 Conditions

Under Articles 109 and 131(4) of the Financial Regulation No 966/2012, the *Agency* may impose **administrative** and **financial penalties** if a beneficiary:

- (a) has committed substantial errors, irregularities or fraud or is in serious breach of its obligations under the Agreement or
- (b) has made false declarations about information required under the Agreement or for the submission of the proposal (or has not supplied such information).

Each beneficiary is responsible for paying the financial penalties imposed on it.

Under Article 109(3) of the Financial Regulation No 966/2012, the *Agency or the Commission* may — under certain conditions and limits — publish decisions imposing administrative or financial penalties.

### 45.2 Duration — Amount of penalty — Calculation

**Administrative penalties** exclude the beneficiary from all contracts and grants financed from the EU or Euratom budget for a maximum of five years from the date the infringement is established by the *Agency*.

If the beneficiary commits another infringement within five years of the date the first infringement is established, the *Agency* may extend the exclusion period up to 10 years.

**Financial penalties** will be between 2% and 10% of the maximum EU contribution indicated, for the beneficiary concerned, in the estimated budget (see Annex 2).

If the beneficiary commits another infringement within five years of the date the first infringement is established, the *Agency* may increase the rate of financial penalties to between 4% and 20%.

### 45.3 Procedure

Before applying a penalty, the *Agency* will formally notify the beneficiary concerned:

- informing it of its intention to impose a penalty, its duration or amount and the reasons why and
- inviting it to submit observations within 30 days.

If the *Agency* does not receive any observations or decides to impose the penalty despite of observations it has received, it will formally notify **confirmation** of the penalty to the beneficiary concerned and — in case of financial penalties — deduct the penalty from the payment of the balance or formally notify a **debit note**, specifying the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the *Agency or the Commission* may **recover** the amount:

- (a) by '**offsetting**' it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the *Agency, the Commission* or another executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *Agency* may offset before the payment date specified in the debit note;

- (b) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the *Agency or the Commission* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

## SECTION 2 LIABILITY FOR DAMAGES

### ARTICLE 46 — LIABILITY FOR DAMAGES

#### 46.1 Liability of the *Agency*

The *Agency* cannot be held liable for any damage caused to the beneficiaries or to third parties as a consequence of implementing the Agreement, including for gross negligence.

The *Agency* cannot be held liable for any damage caused by any of the beneficiaries or third parties involved in the action, as a consequence of implementing the Agreement.

## 46.2 Liability of the beneficiaries

### 46.2.1 Conditions

Except in case of force majeure (see Article 51), the beneficiaries must compensate the *Agency* for any damage it sustains as a result of the implementation of the action or because the action was not implemented in full compliance with the Agreement.

Each beneficiary is responsible for paying the damages claimed from it.

### 46.2.2 Amount of damages - Calculation

The amount the *Agency* can claim from a beneficiary will correspond to the damage caused by that beneficiary.

### 46.2.3 Procedure

Before claiming damages, the *Agency* will formally notify the beneficiary concerned:

- informing it of its intention to claim damages, the amount and the reasons why and
- inviting it to submit observations within 30 days.

If the *Agency* does not receive any observations or decides to claim damages despite the observations it has received, it will formally notify **confirmation** of the claim for damages and a **debit note**, specifying the amount to be recovered, the terms and the date for payment.

If payment is not made by the date specified in the debit note, the *Agency or the Commission* may **recover** the amount:

- (a) by '**offsetting**' it — without the beneficiary's consent — against any amounts owed to the beneficiary concerned by the *Agency, the Commission* or *another* executive agency (from the EU or Euratom budget).

In exceptional circumstances, to safeguard the EU's financial interests, the *Agency* may offset before the payment date specified in the debit note;

- (b) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the *Agency or the Commission* receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC applies.

## **SECTION 3 SUSPENSION AND TERMINATION**

### **ARTICLE 47 — SUSPENSION OF PAYMENT DEADLINE**

#### **47.1 Conditions**

The *Agency* may — at any moment — suspend the payment deadline (see Article 21.2 to 21.4) if a request for payment (see Article 20) cannot be approved because:

- (a) it does not comply with the provisions of the Agreement (see Article 20);
- (b) the technical reports or financial reports have not been submitted or are not complete or additional information is needed, or
- (c) there is doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.

#### **47.2 Procedure**

The *Agency* will formally notify the coordinator of the suspension and the reasons why.

The suspension will **take effect** the day notification is sent by the *Agency* (see Article 52).

If the conditions for suspending the payment deadline are no longer met, the suspension will be **lifted** — and the remaining period will resume.

If the suspension exceeds two months, the coordinator may request the *Agency* if the suspension will continue.

If the payment deadline has been suspended due to the non-compliance of the technical or financial reports (see Article 20) and the revised report or statement is not submitted or was submitted but is also rejected, the *Agency* may also terminate the Agreement or the participation of the beneficiary (see Article 50.3.1(l)).

### **ARTICLE 48 — SUSPENSION OF PAYMENTS**

#### **48.1 Conditions**

The *Agency* may — at any moment — suspend, in whole or in part, the pre-financing payment and interim payments for one or more beneficiaries or the payment of the balance for all beneficiaries, if a beneficiary:

- (a) has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations in the award procedure or under this Agreement or
- (b) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2).

## 48.2 Procedure

Before suspending payments, the *Agency* will formally notify the coordinator:

- informing it of its intention to suspend payments and the reasons why and
- inviting it to submit observations within 30 days of receiving notification.

If the *Agency* does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify **confirmation** of the suspension. Otherwise, it will formally notify that the suspension procedure is not continued.

The suspension will **take effect** the day the confirmation notification is sent by the *Agency*.

If the conditions for resuming payments are met, the suspension will be **lifted**. The *Agency* will formally notify the coordinator.

During the suspension, the periodic report(s) (see Article 20.3) must not contain any individual financial statements from the beneficiary concerned *and its linked third parties*. When the *Agency* resumes payments, the coordinator may include them in the next periodic report.

The beneficiaries may suspend implementation of the action (see Article 49.1) or terminate the Agreement or the participation of the beneficiary concerned (see Article 50.1 and 50.2).

## ARTICLE 49 — SUSPENSION OF THE ACTION IMPLEMENTATION

### 49.1 Suspension of the action implementation, by the beneficiaries

#### 49.1.1 Conditions

The beneficiaries may suspend implementation of the action or any part of it, if exceptional circumstances — in particular *force majeure* (see Article 51) — make implementation impossible or excessively difficult.

#### 49.1.2 Procedure

The coordinator must immediately formally notify to the *Agency* the suspension (see Article 52), stating:

- the reasons why and
- the expected date of resumption.

The suspension will **take effect** the day this notification is received by the *Agency*.

Once circumstances allow for implementation to resume, the coordinator must immediately formally notify the *Agency* and request an **amendment** of the Agreement to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the Agreement or the participation of a beneficiary has been terminated (see Article 50).

The suspension will be **lifted** with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force.

Costs incurred during suspension of the action implementation are not eligible (see Article 6).

## **49.2 Suspension of the action implementation, by the Agency**

### **49.2.1 Conditions**

The *Agency* may suspend implementation of the action or any part of it:

- (a) if a beneficiary has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations in the award procedure or under this Agreement;
- (b) if a beneficiary has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2), or
- (c) if the action is suspected of having lost its scientific or technological relevance.

### **49.2.2 Procedure**

Before suspending implementation of the action, the *Agency* will formally notify the coordinator:

- informing it of its intention to suspend the implementation and the reasons why and
- inviting it to submit observations within 30 days of receiving notification.

If the *Agency* does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify **confirmation** of the suspension. Otherwise, it will formally notify that the procedure is not continued.

The suspension will **take effect** five days after confirmation notification is received by the coordinator (or on a later date specified in the notification).

It will be **lifted** if the conditions for resuming implementation of the action are met.

The coordinator will be formally notified of the lifting and the Agreement will be **amended** to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the Agreement has already been terminated (see Article 50).

The suspension will be lifted with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force.

Costs incurred during suspension are not eligible (see Article 6).

The beneficiaries may not claim damages due to suspension by the *Agency* (see Article 46).

Suspension of the action implementation does not affect the *Agency's* right to terminate the Agreement or participation of a beneficiary (see Article 50), reduce the grant or recover amounts unduly paid (see Articles 43 and 44).

## **ARTICLE 50 — TERMINATION OF THE AGREEMENT OR OF THE PARTICIPATION OF ONE OR MORE BENEFICIARIES**

### **50.1 Termination of the Agreement by the beneficiaries**

#### **50.1.1 Conditions and procedure**

The beneficiaries may terminate the Agreement.

The coordinator must formally notify termination to the *Agency* (see Article 52), stating:

- the reasons why and
- the date the termination will take effect. This date must be after the notification.

If no reasons are given or if the *Agency* considers the reasons do not justify termination, the Agreement will be considered to have been '**terminated improperly**'.

The termination will **take effect** on the day specified in the notification.

#### **50.1.2 Effects**

The coordinator must — within 60 days from when termination takes effect — submit:

- (i) a periodic report (for the open reporting period until termination; see Article 20.3) and
- (ii) the final report (see Article 20.4).

If the *Agency* does not receive the reports within the deadline (see above), only costs which are included in an approved periodic report will be taken into account.

The *Agency* will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4) on the basis of the reports submitted. Only costs incurred until termination are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

Improper termination may lead to a reduction of the grant (see Article 43).

After termination, the beneficiaries' obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

### **50.2 Termination of the participation of one or more beneficiaries, by the beneficiaries**

#### **50.2.1 Conditions and procedure**

The participation of one or more beneficiaries may be terminated by the coordinator, on request of the beneficiary concerned or on behalf of the other beneficiaries.

The coordinator must formally notify termination to the *Agency* (see Article 52) and inform the beneficiary concerned.

If the coordinator's participation is terminated without its agreement, the formal notification must be done by another beneficiary (acting on behalf of the other beneficiaries).

The notification must include:

- the reasons why;
- the opinion of the beneficiary concerned (or proof that this opinion has been requested in writing);
- the date the termination takes effect. This date must be after the notification, and
- a request for amendment (see Article 55), with a proposal for reallocation of the tasks and the estimated budget of the beneficiary concerned (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 56). If termination takes effect after the period set out in Article 3, no request for amendment must be included unless the beneficiary concerned is the coordinator. In this case, the request for amendment must propose a new coordinator.

If this information is not given or if the *Agency* considers that the reasons do not justify termination, the participation will be considered to have been **terminated improperly**.

The termination will **take effect** on the day specified in the notification.

### 50.2.2 Effects

The coordinator must — within 30 days from when termination takes effect — submit:

- (i) a report on the distribution of payments to the beneficiary concerned and
- (ii) if termination takes effect during the period set out in Article 3, a '**termination report**' from the beneficiary concerned, for the open reporting period until termination, containing an overview of the progress of the work, an overview of the use of resources, the individual financial statement and, if applicable, the certificate on the financial statement (see Articles 20.3 and 20.4).

The information in the termination report must also be included in the periodic report for the next reporting period (see Article 20.3).

If the request for amendment is rejected by the *Agency*, (because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the Agreement may be terminated according to Article 50.3.1(c).

If the request for amendment is accepted by the *Agency*, the Agreement is **amended** to introduce the necessary changes (see Article 55).

The *Agency* will **calculate** — on the basis of the periodic reports, the termination report and the report on the distribution of payments — if the (pre-financing and interim) payments received by the beneficiary concerned exceed the beneficiary's EU contribution (calculated by applying the reimbursement rate(s) to the eligible costs declared by the beneficiary *and its linked third parties* and approved by the *Agency*). Only costs incurred by the beneficiary concerned until termination takes

effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

- If the payments received **exceed the amounts due**:
  - if termination takes effect during the period set out in Article 3 and the request for amendment is accepted, the beneficiary concerned must repay to the coordinator the amount unduly received. The *Agency* will formally notify the amount unduly received and request the beneficiary concerned to repay it to the coordinator within 30 days of receiving notification. If it does not repay the coordinator, the *Agency* will draw upon the Guarantee Fund to pay the coordinator and then notify a **debit note** on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);
  - in all other cases (in particular if termination takes effect after the period set out in Article 3), the *Agency* will formally notify a **debit note** to the beneficiary concerned. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *Agency* the amount due and the *Agency* will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);
  - if the beneficiary concerned is the former coordinator, it must repay the new coordinator according to the procedure above, unless:
    - termination is after an interim payment and
    - the former coordinator has not distributed amounts received as pre-financing or interim payments (see Article 21.7).

In this case, the *Agency* will formally notify a **debit note** to the former coordinator. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *Agency* the amount due. The *Agency* will then pay the new coordinator and notify a debit note on behalf of the Guarantee Fund to the former coordinator (see Article 44).

- If the payments received **do not exceed the amounts due**: amounts owed to the beneficiary concerned will be included in the next interim or final payment.

If the *Agency* does not receive the termination report within the deadline (see above), only costs included in an approved periodic report will be taken into account.

If the *Agency* does not receive the report on the distribution of payments within the deadline (see above), it will consider that:

- the coordinator did not distribute any payment to the beneficiary concerned and that
- the beneficiary concerned must not repay any amount to the coordinator.

Improper termination may lead to a reduction of the grant (see Article 43) or termination of the Agreement (see Article 50).

After termination, the concerned beneficiary's obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

### **50.3 Termination of the Agreement or the participation of one or more beneficiaries, by the Agency**

#### **50.3.1 Conditions**

The Agency may terminate the Agreement or the participation of one or more beneficiaries, if:

- (a) one or more beneficiaries do not accede to the Agreement (see Article 56);
- (b) a change to their legal, financial, technical, organisational or ownership situation (*or those of its linked third parties*) is likely to substantially affect or delay the implementation of the action or calls into question the decision to award the grant;
- (c) following termination of participation for one or more beneficiaries (see above), the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants (see Article 55);
- (d) implementation of the action is prevented by force majeure (see Article 51) or suspended by the coordinator (see Article 49.1) and either:
  - (i) resumption is impossible, or
  - (ii) the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants;
- (e) a beneficiary is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures under national law;
- (f) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has been found guilty of professional misconduct, proven by any means;
- (g) a beneficiary does not comply with the applicable national law on taxes and social security;
- (h) the action has lost scientific or technological relevance;
- (i) *not applicable*;
- (j) *not applicable*;
- (k) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity affecting the EU's financial interests;
- (l) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has — in the award procedure or under the Agreement — committed:
  - (i) substantial errors, irregularities, fraud or
  - (ii) serious breach of obligations, including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles;

- (m) a beneficiary has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**‘extension of findings from other grants to this grant’**).

### 50.3.2 Procedure

Before terminating the Agreement or participation of one or more beneficiaries, the *Agency* will formally notify the coordinator:

- informing it of its intention to terminate and the reasons why and
- inviting it, within 30 days of receiving notification, to submit observations and — in case of Point (l.ii) above — to inform the *Agency* of the measures to ensure compliance with the obligations under the Agreement.

If the *Agency* does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify to the coordinator **confirmation** of the termination and the date it will take effect. Otherwise, it will formally notify that the procedure is not continued.

The termination will **take effect**:

- for terminations under Points (b), (c), (e), (g), (h), (j), and (l.ii) above: on the day specified in the notification of the confirmation (see above);
- for terminations under Points (a), (d), (f), (i), (k), (l.i) and (m) above: on the day after the notification of the confirmation is received by the coordinator.

### 50.3.3 Effects

(a) for **termination of the Agreement**:

The coordinator must — within 60 days from when termination takes effect — submit:

- (i) a periodic report (for the last open reporting period until termination; see Article 20.3) and
- (ii) a final report (see Article 20.4).

If the Agreement is terminated for breach of the obligation to submit the reports (see Articles 20.8 and 50.3.1(l)), the coordinator may not submit any reports after termination.

If the *Agency* does not receive the reports within the deadline (see above), only costs which are included in an approved periodic report will be taken into account.

The *Agency* will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4) on the basis of the reports submitted. Only costs incurred until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

This does not affect the *Agency’s* right to reduce the grant (see Article 43) or to impose administrative and financial penalties (Article 45).

The beneficiaries may not claim damages due to termination by the *Agency* (see Article 46).

After termination, the beneficiaries' obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

(b) for **termination of the participation of one or more beneficiaries**:

The coordinator must — within 60 days from when termination takes effect — submit:

- (i) a report on the distribution of payments to the beneficiary concerned;
- (ii) a request for amendment (see Article 55), with a proposal for reallocation of the tasks and estimated budget of the beneficiary concerned (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 56). If termination is notified after the period set out in Article 3, no request for amendment must be submitted unless the beneficiary concerned is the coordinator. In this case the request for amendment must propose a new coordinator, and
- (iii) if termination takes effect during the period set out in Article 3, a **termination report** from the beneficiary concerned, for the open reporting period until termination, containing an overview of the progress of the work, an overview of the use of resources, the individual financial statement and, if applicable, the certificate on the financial statement (see Article 20).

The information in the termination report must also be included in the periodic report for the next reporting period (see Article 20.3).

If the request for amendment is rejected by the *Agency* (because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the Agreement may be terminated according to Article 50.3.1(c).

If the request for amendment is accepted by the *Agency*, the Agreement is **amended** to introduce the necessary changes (see Article 55).

The *Agency* will **calculate** — on the basis of the periodic reports, the termination report and the report on the distribution of payments — if the (pre-financing and interim) payments received by the beneficiary concerned exceed the beneficiary's EU contribution (calculated by applying the reimbursement rate(s) to the eligible costs declared by the beneficiary *and its linked third parties* and approved by the *Agency*). Only costs incurred by the beneficiary concerned until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

- If the payments received **exceed the amounts due**:
  - if termination takes effect during the period set out in Article 3 and the request for amendment is accepted, the beneficiary concerned must repay to the coordinator the amount unduly received. The *Agency* will formally notify the amount unduly received and request the beneficiary concerned to repay it to the coordinator within 30 days of

receiving notification. If it does not repay the coordinator, the *Agency* will draw upon the Guarantee Fund to pay the coordinator and then notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);

- in all other cases, in particular if termination takes effect after the period set out in Article 3, the *Agency* will formally notify a **debit note** to the beneficiary concerned. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *Agency* the amount due and the *Agency* will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);
- if the beneficiary concerned is the former coordinator, it must repay the new coordinator the amount unduly received, unless:
  - termination takes effect after an interim payment and
  - the former coordinator has not distributed amounts received as pre-financing or interim payments (see Article 21.7)

In this case, the *Agency* will formally notify a **debit note** to the former coordinator. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the *Agency* the amount due. The *Agency* will then pay the new coordinator and notify a debit note on behalf of the Guarantee Fund to the former coordinator (see Article 44).

- If the payments received **do not exceed the amounts due**: amounts owed to the beneficiary concerned will be included in the next interim or final payment.

If the *Agency* does not receive the termination report within the deadline (see above), only costs included in an approved periodic report will be taken into account.

If the *Agency* does not receive the report on the distribution of payments within the deadline (see above), it will consider that:

- the coordinator did not distribute any payment to the beneficiary concerned, and that
- the beneficiary concerned must not repay any amount to the coordinator.

After termination, the concerned beneficiary's obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) continue to apply.

## **SECTION 4 FORCE MAJEURE**

### **ARTICLE 51 — FORCE MAJEURE**

'Force majeure' means any situation or event that:

- prevents either party from fulfilling their obligations under the Agreement,
- was unforeseeable, exceptional situation and beyond the parties' control,

- was not due to error or negligence on their part (or on the part of third parties involved in the action), and
- proves to be inevitable in spite of exercising all due diligence.

The following cannot be invoked as force majeure:

- any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure,
- labour disputes or strikes, or
- financial difficulties.

Any situation constituting force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects.

The parties must immediately take all the necessary steps to limit any damage due to force majeure and do their best to resume implementation of the action as soon as possible.

The party prevented by force majeure from fulfilling its obligations under the Agreement cannot be considered in breach of them.

## **CHAPTER 7 FINAL PROVISIONS**

### **ARTICLE 52 — COMMUNICATION BETWEEN THE PARTIES**

#### **52.1 Form and means of communication**

Communication under the Agreement (information, requests, submissions, ‘formal notifications’, etc.) must:

- be made in writing and
- bear the number of the Agreement.

**Until the payment of the balance:** all communication must be made through the electronic exchange system and using the forms and templates provided there.

**After the payment of the balance:** formal notifications must be made by registered post with proof of delivery (‘formal notification on paper’).

Communications in the electronic exchange system must be made by persons authorised according to the ‘Terms and Conditions of Use of the electronic exchange system’. For naming the authorised persons, each beneficiary must have designated — before the signature of this Agreement — a ‘Legal Entity Appointed Representative (LEAR)’. The role and tasks of the LEAR are stipulated in his/her appointment letter (see Terms and Conditions of Use of the electronic exchange system).

If the electronic exchange system is temporarily unavailable, instructions will be given on the *Agency and Commission* websites.

## 52.2 Date of communication

**Communications** are considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the electronic exchange system).

**Formal notifications** through the **electronic** exchange system are considered to have been made when they are received by the receiving party (i.e. on the date and time of acceptance by the receiving party, as indicated by the time stamp). A formal notification that has not been accepted within 10 days after sending is considered to have been accepted.

Formal notifications **on paper** sent by **registered post** with proof of delivery (only after the payment of the balance) are considered to have been made on either:

- the delivery date registered by the postal service or
- the deadline for collection at the post office.

If the electronic exchange system is temporarily unavailable, the sending party cannot be considered in breach of its obligation to send a communication within a specified deadline.

## 52.3 Addresses for communication

The **electronic** exchange system must be accessed via the following URL:

<https://ec.europa.eu/research/participants/portal/desktop/en/projects/>

The *Agency* will formally notify the coordinator and beneficiaries in advance any changes to this URL.

**Formal notifications on paper** (only after the payment of the balance) addressed **to the Agency** must be sent to the following address:

*Executive Agency for Small and Medium-sized Enterprises (EASME)  
H2020 Environment & Resources  
COV2  
B-1049 Brussels Belgium*

Formal notifications on paper (only after the payment of the balance) addressed **to the beneficiaries** must be sent to their legal address as specified in the 'Beneficiary Register'.

## ARTICLE 53 — INTERPRETATION OF THE AGREEMENT

### 53.1 Precedence of the Terms and Conditions over the Annexes

The provisions in the Terms and Conditions of the Agreement take precedence over its Annexes.

Annex 2 takes precedence over Annex 1.

### 53.2 Privileges and immunities

*Not applicable*

## ARTICLE 54 — CALCULATION OF PERIODS, DATES AND DEADLINES

In accordance with Regulation No 1182/71<sup>28</sup>, periods expressed in days, months or years are calculated from the moment the triggering event occurs.

The day during which that event occurs is not considered as falling within the period.

## ARTICLE 55 — AMENDMENTS TO THE AGREEMENT

### 55.1 Conditions

The Agreement may be amended, unless the amendment entails changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

Amendments may be requested by any of the parties.

### 55.2 Procedure

The party requesting an amendment must submit a request for amendment signed in the electronic exchange system (see Article 52).

The coordinator submits and receives requests for amendment on behalf of the beneficiaries (see Annex 3).

If a change of coordinator is requested without its agreement, the submission must be done by another beneficiary (acting on behalf of the other beneficiaries).

The request for amendment must include:

- the reasons why;
- the appropriate supporting documents;
- for a change of coordinator without its agreement: the opinion of the coordinator (or proof that this opinion has been requested in writing).

The *Agency* may request additional information.

If the party receiving the request agrees, it must sign the amendment in the electronic exchange system within 45 days of receiving notification (or any additional information the *Agency* has requested). If it does not agree, it must formally notify its disagreement within the same deadline. The deadline may be extended, if necessary for the assessment of the request. If no notification is received within the deadline, the request is considered to have been rejected.

An amendment **enters into force** on the day of the signature of the receiving party.

An amendment **takes effect** on the date agreed by the parties or, in the absence of such an agreement, on the date on which the amendment enters into force.

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<sup>28</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ L 124, 8.6.1971, p. 1).

## **ARTICLE 56 — ACCESSION TO THE AGREEMENT**

### **56.1 Accession of the beneficiaries mentioned in the Preamble**

The other beneficiaries must accede to the Agreement by signing the Accession Form (see Annex 3) in the electronic exchange system (see Article 52) within 30 days after its entry into force (see Article 58).

They will assume the rights and obligations under the Agreement with effect from the date of its entry into force (see Article 58).

If a beneficiary does not accede to the Agreement within the above deadline, the coordinator must — within 30 days — request an amendment to make any changes necessary to ensure proper implementation of the action. This does not affect the *Agency's* right to terminate the Agreement (see Article 50).

### **56.2 Addition of new beneficiaries**

In justified cases, the beneficiaries may request the addition of a new beneficiary.

For this purpose, the coordinator must submit a request for amendment in accordance with Article 55. It must include an Accession Form (see Annex 3) signed by the new beneficiary in the electronic exchange system (see Article 52).

New beneficiaries must assume the rights and obligations under the Agreement with effect from the date of their accession specified in the Accession Form (see Annex 3).

## **ARTICLE 57 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

### **57.1 Applicable law**

The Agreement is governed by the applicable EU law, supplemented if necessary by the law of Belgium.

### **57.2 Dispute settlement**

If a dispute concerning the interpretation, application or validity of the Agreement cannot be settled amicably, the General Court — or, on appeal, the Court of Justice of the European Union — has sole jurisdiction. Such actions must be brought under Article 272 of the Treaty on the Functioning of the EU (TFEU).

If a dispute concerns administrative or financial penalties, offsetting or an enforceable decision under Article 299 TFEU (see Articles 44, 45 and 46), the beneficiaries must bring action before the General Court — or, on appeal, the Court of Justice of the European Union — under Article 263 TFEU. *Actions against enforceable decisions must be brought against the Commission (not against the Agency).*

## ARTICLE 58 — ENTRY INTO FORCE OF THE AGREEMENT

The Agreement will enter into force on the day of signature by the *Agency* or the coordinator, depending on which is later.

### SIGNATURES

For the coordinator

For the *Agency*

Pernille ANDERSEN with ECAS id nandepn signed in the Participant Portal on 11/07/2016 at 08:57:02 (transaction id SigId-125650-t6Eeibb17zMD3cFzJWbzzPlw9cNNqGBX71MxamPDaJOMQKI2FGTSzQR3a18zWBY4znuTJqTOoB64azNmg3Anzzxve-JJ71zxYb8yrYygdvV9MCry-HZPq7zLDw8cYtSVRetAQJwJs470r5zboTGZMNQiu8iG). Timestamp by third party at Mon Jul 11 13:57:21 CEST 2016