

**GRANT AGREEMENT FOR AN ACTION WITH ONE BENEFICIARY**

**AGREEMENT NUMBER – EUSPA/GRANT/01/2024-X**

This Agreement (“the Agreement”) is concluded between the following parties:

on the one part,

The **European Union Agency for the Space Programme** (hereinafter referred to as the “EUSPA”), represented for the purposes of signature of this grant agreement by its Executive Director, Rodrigo da Costa,

**and**

on the other part,

[full official name] [ACRONYM]

[official legal status or form]<sup>1</sup>

[official registration No.]<sup>2</sup>

[official full address]

[VAT number]

Hereinafter referred to as the “beneficiary”, represented for the purposes of signature of the Agreement by [function, forename and surname].

The parties referred to above

HAVE AGREED

to the Special Conditions (hereinafter referred to as “the Special Conditions”) and the following Annexes:

- Annex I Description of the *action (to be provided by the beneficiary)* including as resulting from clarifications
- Annex II General Conditions (hereinafter referred to as “the General Conditions”)
- Annex III Estimated budget of the *action (to be provided by the beneficiary)*

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<sup>1</sup> To be deleted or filled in according to the "Legal Entity" form

<sup>2</sup> To be deleted or filled in according to the "Legal Entity" form

- Annex IV Model technical report: **[not applicable]**
- Annex V Model financial statement
- Annex VI Model terms of reference for the certificate on the financial statements
- Annex VII Model terms of reference for the certificate on the compliance of the cost accounting practices: **[not applicable]**
- Annex VIII List of pre-existing intellectual property rights
- Annex IX Call for Proposals EUSPA/GRANT/01/2024
- Annex X Unit cost rates
- Annex XI Free of charge right of use Agreement

which form an integral part of the Agreement.

The provisions in the Special Conditions of the Agreement take precedence over its Annexes.

The provisions in Annex II "General Conditions" take precedence over the other Annexes.

The figures provided under Annex III (Estimated budget of the *action*) take precedence over the figures provided under Annex I (Description of the *action*).

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## SPECIAL CONDITIONS

### ARTICLE 1.1 – SUBJECT MATTER OF THE AGREEMENT

EUSPA has decided to award a grant under the terms and conditions set out in the Special Conditions, the General Conditions and the other Annexes to the Agreement, for the *action* entitled **[insert number in bold]** as described in Annex I.

By signing the Agreement the beneficiary accepts the grant and agrees to implement the action, acting on its own responsibility.

### ARTICLE 1.2 – ENTRY INTO FORCE AND IMPLEMENTATION PERIOD OF THE AGREEMENT

**1.2.1** The Agreement enters into force on the date on which the last party signs it.

**1.2.2** The action runs for **[insert number in bold]** months starting on the first day of the month following the date when the last party signs the Agreement (“starting date”).

*Or alternatively if action started before signature following EUSPA authorisation*

**1.2.2** The *action* runs for **XX months** starting on **XXXX** in line with Article 193 (2) of the Financial Regulation and based on the beneficiary’s demonstrated need for starting the action prior to the signature of the grant agreement (“starting date”) (see Annex XI).

### ARTICLE 1.3 – MAXIMUM AMOUNT AND FORM OF GRANT

**1.3.1** The **maximum amount of the grant** is EUR **[insert amount]**.

**1.3.2** The grant takes **the form** of:

the reimbursement of maximum of **[insert percentage]%** of the eligible costs of the action (‘reimbursement of eligible costs’), which are estimated at EUR [...] and which are:

- (i) actually incurred (“reimbursement of actual costs”) **for the direct costs**
- (ii)a declared on the basis of an amount of EUR per unit as specified in Annex X (“reimbursement of unit costs”) **for the beneficiaries which are small and medium-sized enterprises (SME) and their owners do not receive a salary and for the beneficiaries which are natural persons and they do not receive a salary**
- (ii)b reimbursement of all other unit costs: **not applicable**
- (iii) reimbursement of lump sum costs: **not applicable**
- (iv) declared on the basis of a **flat-rate of 7 % of the eligible direct costs** excluding subcontracting (“reimbursement of flat-rate costs”) for the indirect costs

- (v) reimbursement of costs declared on the basis of the beneficiary's usual cost accounting practices: **not applicable.**

No other type of costs shall be declared eligible.

## **ARTICLE I.4 – REPORTING, REQUESTS FOR PAYMENTS AND SUPPORTING DOCUMENTS**

### **I.4.1 Reporting periods**

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

- Reporting period 1: from the starting date of the project to the half term of the project (x months);
- Reporting period 2: from [x+1 month] to the end of the project as set out in Article I.2.2;

### **I.4.2 Request for interim payment and supporting documents**

The beneficiary must submit a request for an interim payment within 60 (sixty) calendar days following the end of the first reporting period, as specified in Article I.4.1.

This request must be accompanied by the following documents:

- (a) an interim report on the implementation of the action (“interim technical report”), containing at least the following elements:
  - (i) the information needed to justify the eligible costs declared;
  - (ii) information on subcontracting as referred to in Article II.11.1(d), including unforeseen subcontracting (if applicable);
  - (iii) work performed from the beginning of the project to the end of the period covered by the report and main results achieved, per task;
  - (iv) deliverables submitted;
  - (v) reviews presented;
  - (vi) deviations from the description of the action (if applicable) concerning tasks (e.g. delays in the implementation), use of resources (deviations of the use of resources between actual and planned use of resources, especially related to person-months per task).
- (b) an interim financial statement (“interim financial statement”). The interim financial statement must include a consolidated statement and a breakdown of the amounts claimed by the beneficiary and its affiliated entities.

The interim financial statement must be drawn up in accordance with the structure of the estimated budget set out in Annex III and in accordance with Annex V. It must also detail the amounts for each of the forms of grant set out in Article I.3.2 for the reporting period concerned;

The beneficiary must certify that the information provided in the financial statement is full, reliable and true.

The beneficiary must also certify that the costs incurred can be considered eligible in accordance with the Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27.

- (c) A certificate on the financial statements of the action or the work programme and underlying accounts may be demanded by the authorising officer responsible in support of interim payments or payments of balances of any amount.

If requested a certificate must be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VI.

The certificate must certify that the costs declared in the interim financial statement by the beneficiary or its affiliated entities for the categories of costs reimbursed in accordance with Article I.3.2(i) are real, accurately recorded and eligible in accordance with the Agreement.

#### **I.4.3 Request for payment of the balance and supporting documents**

The beneficiary must submit a request for payment of the balance within 60 (sixty) calendar days following the end of second and last reporting period, as specified in Article I.4.1.

This request must be accompanied by the following documents:

- (a) a final report on implementation of the action (“final technical report”) containing at least the following:
- (i) the information needed to justify the eligible costs declared;
  - (ii) information on subcontracting as referred to in Article II.11.1(d), including unforeseen subcontracting (if applicable);
  - (iii) Work performed from the beginning of the project to the end of the period covered by the report and main results achieved, per task;
  - (iv) deliverables submitted;
  - (v) reviews presented;
  - (vi) deviations from the description of the action (if applicable) concerning tasks (e.g. delays in the implementation), use of resources (deviations of the use of resources between actual and planned use of resources, especially related to person-months per task).
- (b) a final financial statement (“final financial statement”). The final financial statement must include a consolidated statement and a breakdown of the amounts claimed by the beneficiary and its affiliated entities.

The final financial statement shall be drawn up in accordance with the structure of the estimated budget set out in Annex III and in accordance with Annex V and detail the amounts for each of the forms of grant set out in Article I.3.2 for the last reporting period;



The financial statement must also detail the receipts of the action referred to in Article II.25.3.

The beneficiary must certify that the information provided in the financial statement is full, reliable and true.

The beneficiary must also certify that the costs incurred can be considered eligible in accordance with the Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27.

In addition, the beneficiary must certify that all the receipts referred to in Article II.25.3 have been declared.

(c) a summary financial statement (“summary financial statement”).

Not applicable.

(d) A certificate on the financial statements of the action or the work programme and underlying accounts may be demanded by the authorising officer responsible in support of interim payments or payments of balances of any amount.

If requested, a certificate shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VI. The certificate shall certify that the costs declared in the final financial statement by the beneficiary or its affiliated entities for the categories of costs reimbursed in accordance with Article I.3.2(a)(i) are real, accurately recorded and eligible in accordance with the Agreement.

In addition, the certificate shall certify that all the receipts referred to in Article II.25.3 have been declared.

#### **I.4.4 Information on cumulative expenditure incurred**

Not applicable

#### **I.4.5 Currency for requests for payment and financial statements**

Requests for payment and financial statements must be drafted in Euro.

The beneficiary and affiliated entities with general accounts in a currency other than the euro must convert costs incurred in another currency into Euro at the average of the daily exchange rates published in the C series of the *Official Journal of the European Union* (available at <http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html>), determined 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, conversion must be made at the average of the monthly accounting rates established by the Commission and published on its website

([http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm)), determined over the corresponding reporting period.

The beneficiary and affiliated entities with general accounts in Euro must convert costs incurred in another currency into Euro in accordance with their usual accounting practices.

#### **1.4.6 Language of requests for payments, technical reports and financial statements**

All requests for payments, technical reports and financial statements must be submitted in English.

### **ARTICLE I.5 — PAYMENTS AND PAYMENT ARRANGEMENTS**

#### **1.5.1 Payments to be made**

EUSPA must make the following payments to the beneficiary:

- one pre-financing payment of an amount equal to [insert percentage]% of the amount of the grant;
- one interim payment on the basis of the request for interim payment referred to in Article I.4.2;
- one payment of the balance on the basis of the request for payment of the balance referred to in Article I.4.3.

#### **1.5.2 Pre-financing payment**

The aim of the pre-financing is to provide the beneficiary with a float. The pre-financing remains the property of the European Union until it is cleared against interim payments or, if it is not cleared against interim payments, until the payment of the balance.

EUSPA shall make the pre-financing payment of EUR [insert amount] to the beneficiary within 30 (thirty) calendar days from the entry into force of the Agreement, except if Article II.24.1 applies.

EUSPA reserves the right to request a financial guarantee before the pre-financing payment based on its analysis of the financial capacity of the beneficiary. Should EUSPA exercise this right, it shall inform the beneficiary in due time. The financial guarantee must fulfil the following conditions:

- (a) it is provided by a bank or an approved financial institution or, if requested by the beneficiary and accepted by EUSPA, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require EUSPA to first have recourse against the principal debtor (i.e. the beneficiary concerned); and
- (c) it explicitly remains in force until the pre-financing is cleared against interim payments or payment of the balance by EUSPA. If payment of the balance takes the form of a recovery, the financial guarantee must remain in force until three months after the debit note is notified to the beneficiary. EUSPA must release the guarantee within the following month.

#### **1.5.3 Interim payment**

The interim payment reimburses or covers the eligible costs incurred for the implementation of the *action* during the corresponding reporting period.

EUSPA shall pay the beneficiary the amount due as interim payment within 90 (ninety) calendar days from when EUSPA receives the documents referred to in Article I.4.3, except if Article II.24.1 or II.24.2 apply.

Payment is subject to the approval of the request for interim payment and of the supporting documents. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

EUSPA calculates the amount due as interim payment as follows:

Step 1 — It applies the reimbursement rate to the eligible costs

Step 2 — It clears the pre-financing

Step 3 — It limits the amount to 90% of the *maximum amount of the grant*.

#### I.5.3.1 Step 1 — Applying the reimbursement rate to the eligible costs

This step is applied as follows: the reimbursement rate specified in Article I.3.2 is applied to the eligible costs of the *action* approved by EUSPA for the concerned reporting period and for the corresponding categories of costs for the beneficiary and its affiliated entities.

#### I.5.3.2 Step 2 — Clearing the pre-financing

The interim payment must clear 50% of the amount of the pre-financing payment previously made.

The amount of pre-financing to be cleared shall be deducted from the amount obtained following Step 1.

#### I.5.3.3 Step 3 — Limiting the amount to 90% of the *maximum amount of the grant*

The total amount of pre-financing and interim payments must not exceed 90% of the *maximum amount of the grant*.

#### **I.5.4 Payment of the balance**

The payment of the balance reimburses or covers the remaining part of the eligible costs incurred by the beneficiary for the implementation of the *action*.

If the total amount of earlier payments is greater than the final amount of the grant determined in accordance with Article II.25, the payment of the balance takes the form of a recovery as provided for by Article II.26.

If the total amount of earlier payments is lower than the final amount of the grant determined in accordance with Article II.25, EUSPA must pay the balance within 90 (ninety) calendar days from when it receives the documents referred to in Article I.4.3, except if Article II.24.1 or II.24.2 apply.

Payment is subject to the approval of the request for payment of the balance and of the accompanying documents. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

EUSPA determines the amount due as the balance by deducting the total amount of pre-financing and interim payments (if any) already made from the final amount of the grant determined in accordance with Article II.25.

The amount to be paid may, however, be offset, without the beneficiary's consent, against any other amount owed by the beneficiary to EUSPA up to the maximum amount of the grant.

#### **I.5.5 Notification of amounts due**

EUSPA must send a *formal notification* to the beneficiary:

- (a) informing it of the amount due; and
- (b) specifying whether the notification concerns a further pre-financing payment, an interim payment or the payment of the balance.

For the payment of the balance, EUSPA must also specify the final amount of the grant determined in accordance with Article II.25.

#### **I.5.6 Interest on late payment**

If EUSPA does not pay within the time limits for payment, the beneficiary is entitled to late-payment interest at the rate applied by the European Central Bank for its main refinancing operations in Euro ("the 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 time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

Late-payment interest is not due if the beneficiary is a Member State of the European Union (including regional and local government authorities and other public bodies acting in the name of and on behalf of the Member State for the purpose of the Agreement).

If EUSPA suspends the time limit for payment as provided for in Article II.24.2 or if it suspends an actual payment as provided for in Article II.24.1, these actions may not be considered as cases of late payment.

Late-payment interest covers the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article I.5.8. EUSPA does not consider payable interest when determining the final amount of grant within the meaning of Article II.25.

As an exception to the first subparagraph, if the calculated interest is lower than or equal to EUR 200, it must be paid to the beneficiary only if the beneficiary requests it within two months of receiving late payment.

#### **I.5.7 Currency for payments**

EUSPA must make payments in Euro.

#### **I.5.8 Date of payment**

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

#### **I.5.9 Costs of payment transfers**

Costs of the payment transfers are borne as follows:

- (a) EUSPA bears the costs of transfer charged by its bank;
- (b) the beneficiary bears the costs of transfer charged by its bank;
- (c) the party causing a repetition of a transfer bears all costs of repeated transfers.

#### **I.5.10 Payments to the beneficiary**

EUSPA must make payments to the beneficiary.

Payments to the beneficiary discharge EUSPA from its payment obligation.

### **ARTICLE 1.6 — BANK ACCOUNT FOR PAYMENTS**

All payments must be made to the beneficiary's bank account as indicated below:

Name of bank: ...

Precise denomination of the account holder: ...

Full account number (including bank codes): ...

IBAN code: ...<sup>3</sup>

### **ARTICLE 1.7 — DATA CONTROLLER, COMMUNICATION DETAILS OF THE PARTIES**

#### **I.7.1 Data controller**

The entity acting as a data controller according to Article II.7 is the Head of Market Downstream and Innovation department of EUSPA.

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<sup>3</sup> BIC or SWIFT code applies for countries where the IBAN code does not apply.

### **I.7.2 Communication details of EUSPA**

Any communication addressed to EUSPA must be sent to the following address:

European Union Agency for the Space Programme  
Market downstream and innovation department  
Janovského 438/2  
17000 Prague 7  
Czech Republic  
E-mail address: market@euspa.europa.eu

### **I.7.3 Communication details of the beneficiary**

Any communication from EUSPA to the beneficiary must be sent to the following address:

[Full name]  
[Function]  
[Name of the entity]  
[Full official address]  
E-mail address: [complete]

## **ARTICLE I.8 — ENTITIES AFFILIATED TO THE BENEFICIARY**

The following entities are considered as affiliated entities for the purpose of the Agreement:

- [name of the entity], affiliated to [name or acronym of the beneficiary];
- [name of the entity], affiliated to [name or acronym of the beneficiary];

[idem for further affiliated entities]

## **ARTICLE I.9 – ADDITIONAL PROVISIONS ON USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS) BY THE EUROPEAN UNION**

Without prejudice to Article II.9.3 the European Commission and EUSPA acquire rights to use the results of the *action* and such results will be exploited for non-commercial purposes only, using any of the following modes:

- (a) to promote and create awareness of the achieved project results:
  - i. To prepare and disseminate promotional material in hard copies, in electronic or digital format (e.g. leaflets, presentations, etc.).
  - ii. To advertise through press information services, in hard copies, in electronic or digital format.
  - iii. To reproduce the demonstration and/or presentations after the completion of the project at EUSPA or other institutional premises

- (b) to showcase and demonstrate the components' and algorithms' capabilities and applications for institutional purposes.
- (c) to edit or re-write in another way the textual deliverables of the action, including shortening, summarising and correcting technical errors in the content;
- (d) to run a simplified demonstration showcasing the project's achievements and in particular the actual Galileo contribution;
- (e) to license or sub-license to third parties for the same purposes above mentioned.

The beneficiary shall ensure that the European Union has the rights of use specified in the General Conditions for the whole duration of the industrial or intellectual property right[s] concerned.

The right of use as per Article II.9.3. shall be royalty-free, non-exclusive, worldwide and not revocable. EUSPA and any EU institution shall have the same rights defined under Article II.9.3 as the European Union.

**ARTICLE I.10 – ADDITIONAL CONDITIONS FOR CHECKS, AUDITS AND EVALUATION**

As an addition to Article II.27.1, the technical and financial checks, audits, and interim and final evaluations can be carried out in person or remotely.

The remote checks, audits and evaluations shall be subject to compliance with the relevant procedures regarding the transfer of confidential information irrespectively of the format of the information.

All requested information shall be provided in a timely manner but not later than 30 (thirty) calendar days after the request was sent to the coordinator otherwise Article II.27.3(a) will be applied.

**ARTICLE I.11 — FINANCIAL SUPPORT TO THIRD PARTIES**

By derogation from Article II.12 of this Agreement, the financial support to third parties is not applicable under the Agreement.

**SIGNATURES**

For the beneficiary

For EUSPA

*[function/forename/surname]*

Rodrigo da Costa, Executive Director

*[signature]*

*[signature]*

Party Initial



Done in [*place*], [*date*]

Done in Prague, [*date*]

In duplicate in English.

Party Initial



## ANNEX II — GENERAL CONDITIONS

### PART A — LEGAL AND ADMINISTRATIVE PROVISIONS

#### ARTICLE II.1 - DEFINITIONS

The following definitions apply for the purpose of the Agreement:

**‘Action’**: the set of activities or the project for which the grant is awarded, to be implemented by the beneficiary as described in Annex I;

**‘Confidential information or document’**: any information or document (in any format) received by either party from the other or accessed by either party in the context of the implementation of the Agreement that any of the parties has identified in writing as confidential. It does not include information that is publicly available;

**‘Conflict of interests’**: a situation where the impartial and objective implementation of the Agreement by the beneficiary is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with EUSPA or any third party related to the subject matter of the Agreement;

**‘Direct costs’**: those specific costs which are directly linked to the implementation of the action and can therefore be attributed directly to it. They may not include any indirect costs;

**‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Agreement, which is not attributable to error or negligence on their part or on the part of the subcontractors affiliated entities or third parties in receipt of financial support and which proves to be inevitable despite their exercising due diligence. The following cannot be invoked as *force majeure*: labour disputes, strikes, financial difficulties or any default of a service, defect in equipment or materials or delays in making them available, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’**: form of communication between the parties made in writing by mail or electronic mail which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’**: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents, to non-disclosure of information in violation of a specific obligation;

**‘Implementation period’**: the period of implementation of the activities forming part of the action, as specified in Article 1.2.2;

**‘Indirect costs’**: those costs which are not specific costs directly linked to the implementation of the action and which therefore cannot be attributed directly to it. They may not include any costs identifiable or declared as eligible direct costs;

**‘Institutional purposes’:** any non-commercial purpose related to the development, operation, maintenance and service provision of the European Union Space Programmes.

**‘Intellectual Property Rights (IPR)’:** have the meaning stated in Article 2 of the Convention establishing the World Intellectual Property Organisation, done in Stockholm on 14 July 1967;

**‘Irregularity’:** any infringement of a provision of European Union law resulting from an act or omission by the beneficiary, which has or would have the effect of prejudicing the European Union’s budget;

**‘Maximum amount of the grant’:** the maximum EU contribution to the action, as defined in Article I.3.1;

**‘Pre-existing material’:** any materials, document, technology or know-how which exists prior to the beneficiary using it for the production of a result in the implementation of the action;

**‘Pre-existing right’:** any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or a right of use belonging to the beneficiary or any other third parties;

**‘Related person’:** any person who has the power to represent the beneficiary or to take decisions on its behalf;

**‘Results’:** shall mean any tangible or intangible output, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, stemming from the execution of the Agreement which are generated by the beneficiary, as well as any attached rights and including *IPRs*. Where *IPR* is concerned, this definition comprises all phases and stages of development, as well as improvements, adaptations and/or modifications of and add-ons to the subject-matter of *Union IPR* made by the beneficiary in the frame of this Agreement;

**‘Starting date’:** the date on which the implementation of the action starts as provided for in Article I.2.2;

**‘Subcontract’:** a procurement contract within the meaning of Article II.10, which covers the implementation by a third party of tasks forming part of the action as described in Annex I;

**‘Substantial error’:** any infringement of a provision of an agreement resulting from an act or omission, which causes or might cause a loss to the European Union’s budget.

**‘Union IPR’:** means the IPRs listed in the Galileo OS SIS ICD available at [https://www.gsc-europa.eu/system/files/galileo\\_documents/Galileo-OS-SIS-ICD.pdf](https://www.gsc-europa.eu/system/files/galileo_documents/Galileo-OS-SIS-ICD.pdf), as amended/integrated from time to time.

## ARTICLE II.2 – GENERAL OBLIGATIONS OF THE BENEFICIARY

The beneficiary:

- (a) is liable for carrying out the *action* in accordance with the Agreement;
- (b) must comply with any legal obligations it is bound by under applicable EU, international and national law;
- (c) must inform EUSPA immediately of any events or circumstances of which the beneficiary is aware, that are likely to affect or delay the implementation of the *action*;
- (d) must inform EUSPA immediately:
  - (i) of any change in its legal, financial, technical, organisational or ownership situation and of any change in its name, address or legal representative;
  - (ii) of any change in the legal, financial, technical, organisational or ownership situation of its affiliated entities and of any change in their name, address or legal representative.

## **ARTICLE II.3 – COMMUNICATION BETWEEN PARTIES**

### **II.3.1 Form and means of communication**

Any communication relating to the Agreement or to its implementation must:

- (a) be made in writing (in paper or electronic form);
- (b) bear the number of the Agreement; and
- (c) be made using the communication details identified in Article I.7.

If a party requests written confirmation of an electronic communication within a reasonable time, the sender must provide an original signed paper version of the communication as soon as possible.

### **II.3.2 Date of communications**

Any communication is considered to have been made when the receiving party receives it, unless the Agreement states that communication is considered to have been made on the date when the communication was sent.

Email is considered to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email address indicated in Article I.7. The sending party must be able to prove the date of dispatch. If the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to EUSPA using the postal or courier services is considered to have been received by EUSPA on the date on which it is registered by the department identified in Article I.7.2.

*Formal notifications* are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

#### **ARTICLE II.4 – LIABILITY FOR DAMAGES**

- II.4.1** EUSPA may not be held liable for any damage caused or sustained by the beneficiary, including any damage caused to third parties as a consequence of or during the implementation of the *action*.
- II.4.2** Except in cases of *force majeure*, the beneficiary must compensate EUSPA 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.

#### **ARTICLE II.5 – CONFLICT OF INTEREST**

- II.5.1** The beneficiary shall take all necessary measures to prevent any situation of *conflict of interests*.
- II.5.2** The beneficiary shall inform EUSPA without delay of any situation constituting or likely to lead to a *conflict of interests*. It must take immediately all the necessary steps to rectify this situation.

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

#### **ARTICLE II.6 - CONFIDENTIALITY**

- II.6.1** During implementation of the *action* and for five years after the payment of the balance, the parties must treat with confidentiality any *confidential information and documents*.
- II.6.2** The parties may only use *confidential information and documents* for a reason other than to fulfil their obligations under the Agreement if they have first obtained the prior written agreement of the other party.
- II.6.3** The confidentiality obligations do not apply if:
- (a) the disclosing party agrees to release the other party from those obligations;
  - (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligations;
  - (c) EUSPA discloses the confidential information to third entity authorized by EUSPA in order to carry out technical and financial checks, audits and evaluation in relation to the proper implementation of the action and compliance with the obligations under the Agreement;
  - (d) the disclosure of the *confidential information or documents* is required by law.

#### **ARTICLE II.7 – PROCESSING OF PERSONAL DATA**

- II.7.1** Any personal data included in the Agreement must be processed in accordance with the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data<sup>4</sup>. Such data shall be processed by the data controller (EUSPA) and the data processor (the beneficiary) solely for the purposes of the performance, management and monitoring of the Agreement without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.
- II.7.2** The following categories of personal data are expected to be processed by the data controller: contact details of the beneficiary's personnel or its contractors that may be included in deliverables, such as name and last name, gender, telephone number, email address, postal address, organisation and position within organisation. The provision of the aforementioned data is a contractual requirement.
- II.7.3** The recipients of the personal data mentioned under Article II.7.2 shall be (1) a limited number of staff of EUSPA managing the Agreement, (2) a limited number of staff of EUSPA contractors assisting EUSPA staff in the management of the Agreement, (3) a limited number of staff of EUSPA contractors providing hosting services for EUSPA servers. The personal data will be stored in the premises of the aforementioned recipients, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present Agreement for audit and discharge purposes.
- II.7.4** The beneficiary shall have the right to request from the data controller access to, rectification or erasure of its personal data, restriction of processing, the right to object to the processing and the right to data portability, provided that there are grounds for the exercise of any of these rights, as per the applicable rules.
- II.7.5** The beneficiary shall have right of recourse at any time to the European Data Protection Supervisor.
- II.7.6** If, throughout the duration of the Agreement, the beneficiary is required to process any personal data (acting as data processor), the beneficiary shall:
- i. inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
  - ii. with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in

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<sup>4</sup> Currently Regulation (EU) 2018/1725.

- such a case, the processor shall inform the data controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- iii. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - iv. without prejudice to Article II.7.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
  - v. not engage another processor or sub-processor without prior specific written authorisation of the controller;
  - vi. taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
  - vii. assist the controller for the fulfilment of its obligations to
    - a. ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users
    - b. notify a personal data breach to the European Data Protection Supervisor
    - c. communicate a personal data breach without undue delay to the data subject, where applicable
    - d. carry out data protection impact assessments and prior consultations as necessary
  - viii. notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:
    - a. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
    - b. likely consequences of the breach;
    - c. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
  - ix. maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties;
  - x. delete all the personal data after the end of the provision of services relating to processing;
  - xi. make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller

**II.7.7** The beneficiary shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the Agreement.

**II.7.8** The beneficiary shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

## **ARTICLE II.8 – VISIBILITY OF EUROPEAN UNION FUNDING**

### **II.8.1 Information on European Union funding and use of the European Union emblem**

Unless EUSPA requests or agrees otherwise, any communication or publication made by the beneficiary that relates to the *action*, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, in electronic form, etc.), must:

- (a) indicate that the *action* has received funding from the European Union; and
- (b) display the European Union emblem.

When displayed in association with another logo, the European Union emblem must have appropriate prominence.

The obligation to display the European Union emblem does not confer on the beneficiary a right of exclusive use. The beneficiary may not appropriate the European Union emblem or any similar trademark or logo, either by registration or by any other means.

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the beneficiary may use EUSPA and the European Union emblem without first obtaining permission from EUSPA and the European Commission.

### **II.8.2 Disclaimers excluding EUSPA responsibility**

Any communication or publication that relates to the *action*, made by the beneficiary in any form and using any means, must indicate:

- (a) that it reflects only the author's view; and
- (b) that EUSPA is not responsible for any use that may be made of the information it contains.

## **ARTICLE II.9 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

### **II.9.1 Ownership of the results by the beneficiary**

The beneficiary retains ownership of the results of the *action*, including industrial and intellectual property rights, and of the reports and other documents relating to it, unless stipulated otherwise in the Agreement.

## II.9.2 Pre-existing rights

On written request of the European Commission/EUSPA specifying which of the results the Commission/EUSPA intends to use, the beneficiary must:

- (a) establish a list specifying all *pre-existing rights* included in those results; and
- (b) provide this list to the Commission/EUSPA at the latest with the request for payment of the balance.

The beneficiary must ensure that it or its affiliated entities have all the rights to use any *pre-existing rights* during the implementation of the Agreement.

## II.9.3 Rights of use of the results and of pre-existing rights by the European Union

The beneficiary grants the European Commission and EUSPA the following rights to use the results of the *action*:

- (a) for its own purposes and in particular to make available to persons working for EUSPA, European Commission, other European Union institutions, agencies and bodies and to Member States' institutions, as well as to copy and reproduce in whole or in part and in an unlimited number of copies;
- (b) reproduction: the right to authorise direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including making the results available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes communication and broadcasting by cable or by satellite;
- (d) distribution: the right to authorise any form of distribution of results or copies of the results to the public;
- (e) adaptation: the right to modify the results;
- (f) translation;
- (g) the right to store and archive the results in line with the document management rules applicable to the European Commission and EUSPA, including digitisation or converting the format for preservation or new use purposes;
- (h) where the results are documents, the right to authorise the reuse of the documents in conformity with Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents to the extent that it is applicable and the documents fall within its scope and are not excluded by any of its provisions. For the sake of this provision, the terms 'reuse' and 'document' have the meanings given to them by Decision 2011/833/EU.



The above rights of use may be further specified in the Special Conditions.

Additional rights of use for the European Commission and EUSPA may be provided for in the Special Conditions.

The beneficiary must ensure that the European Commission, representing the European Union has the right to use any *pre-existing rights* included in the results of the *action*. The *pre-existing rights* must be used for the same purposes and under the same conditions as applicable to the rights of use of the results of the *action*, unless specified otherwise in the Special Conditions.

Information about the copyright owner must be inserted in cases where the result is divulged by the European Commission, representing the European Union. The copyright information must read: '© — year — name of the copyright owner. All rights reserved. Licenced to the European Union/EUSPA under conditions.'

If the beneficiary grants rights of use to the European Commission and EUSPA, this does not affect its confidentiality obligations under Article II.6 or the beneficiary's obligation under Article II.3.1.

#### **ARTICLE II.10 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION**

**II.10.1** If the implementation of the *action* requires the beneficiary to procure goods, works or services, it must award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, it must avoid any *conflict of interests*.

The beneficiary shall ensure that EUSPA, the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under Article II.27 also towards the beneficiary's contractors.

**II.10.2** The beneficiary that is a 'contracting authority' within the meaning of Directive 2014/24/EU<sup>5</sup> or 'contracting entity' within the meaning of Directive 2014/25/EU<sup>6</sup> must comply with the applicable national public procurement rules.

The beneficiary shall ensure that the conditions applicable to it under Articles II.4, II.5, II.6 and II.9 are also applicable to the contractors.

**II.10.3** The beneficiary remains solely responsible for carrying out the *action* and for compliance with the Agreement.

**II.10.4.** If the beneficiary breaches its obligations under Article II.10.1 the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (c), (d) and (e).

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<sup>5</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

<sup>6</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

If the beneficiary breaches its obligations under Article II.10.2 the grant may be reduced in accordance with Article II.25.4.

## **ARTICLE II.11 – SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION**

**II.11.1** Beneficiary may subcontract tasks forming part of the *action*. If it does so, it must ensure that, in addition to the conditions specified in Article II.10, the following conditions are also complied with:

- (a) subcontracting does not cover core tasks of the *action*;
- (b) recourse to subcontracting is justified because of the nature of the *action* and what is necessary for its implementation;
- (c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III;
- (d) any recourse to subcontracting, if not provided for in Annex I, is communicated by the beneficiary and approved by EUSPA. EUSPA may grant approval:

(i) before any recourse to subcontracting, if the beneficiary requests an amendment as provided for in Article II.13; or

(ii) after recourse to subcontracting if the subcontracting:

- is specifically justified in the interim or final technical report referred to in Articles I.4.2 and I.4.3; and

- does not entail changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;

- (e) the beneficiary ensures that the conditions applicable to it under Article II.8 are also applicable to the subcontractors.

**II.11.2** If the beneficiary breaches its obligations under Article II.11.1 (a), (b), (c) or (d), the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (f).

If the beneficiary breaches its obligation under Article II.11.1 (e) the grant may be reduced in accordance with Article II.25.4.

## **ARTICLE II.12 – FINANCIAL SUPPORT TO THIRD PARTIES**

**II.12.1** If, while implementing the *action*, the beneficiary has to give financial support to third parties, the beneficiary must give such financial support in accordance with the conditions specified in Annex I. Under those conditions, the following information must be stated at least:

- (a) the maximum amount of financial support. This amount may not exceed EUR 60 000 for each third party except if the financial support is the primary aim of the *action* as specified in Annex I;

- (b) the criteria for determining the exact amount of the financial support;
- (c) the different types of activity that may receive financial support, on the basis of a fixed list;
- (d) the persons or categories of persons which may receive financial support;
- (e) the criteria for giving the financial support.

**II.12.2** As an exception to Article II.12.1, if the financial support takes the form of a prize, the beneficiary must give such financial support in accordance with the conditions specified in Annex I. Under those conditions, the following information shall at least be stated:

- (a) the conditions for participation;
- (b) the award criteria;
- (c) the amount of the prize;
- (d) the payment arrangements.

**II.12.3** The beneficiary must ensure that the conditions applicable to it under Articles II.4, II.5, II.6, II.8, II.9 and II.27 are also applicable to the third parties receiving financial support.

#### **ARTICLE II.13 – AMENDMENTS TO THE AGREEMENTS**

**II.13.1** Any amendment to the Agreement must be made in writing.

**II.13.2** An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants.

**II.13.3** Any request for amendment must:

- (a) be duly justified;
- (b) be accompanied by appropriate supporting documents; and
- (c) be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the *implementation period*.

Point (c) does not apply in cases duly substantiated by the party requesting the amendment if the other party agrees.

**II.13.4** In case of an operating grant the period set out in Article I.2.2 shall not be extended via amendments.

**II.13.5** Amendments enter into force on the date on which the last party signs or on the date of approval of the request for amendment.

Amendments take effect on a date agreed by the parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

#### **ARTICLE II.14 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES**

**II.14.1** The beneficiary may not assign any of its claims for payment against EUSPA to any third party, except if approved by EUSPA on the basis of a reasoned, written request by the beneficiary.

If EUSPA does not accept the assignment or the terms of it are not complied with, the assignment has no effect on it.

**II.14.2** In no circumstances may an assignment release the beneficiary from its obligations towards EUSPA.

#### **ARTICLE II.15 – FORCE MAJEURE**

**II.15.1** A party faced with *force majeure* must send a *formal notification* to the other party without delay, stating the nature of the situation or of the event, its likely duration and foreseeable effects.

**II.15.2** The parties must take the necessary measures to limit any damage due to *force majeure*. They must do their best to resume the implementation of the *action* as soon as possible.

**II.15.3** The party faced with *force majeure* may not be considered in breach of its obligations under the Agreement if it has been prevented from fulfilling them by *force majeure*.

#### **ARTICLE II.16 – SUSPENSION OF THE IMPLEMENTATION OF THE ACTION**

##### **II.16.1 Suspension of implementation by the beneficiary**

The beneficiary, may suspend the implementation of the *action* or any part of it, if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*.

The beneficiary must immediately inform EUSPA, stating:

- (a) the reasons for suspension, including details about the date or period when the exceptional circumstances occurred; and
- (b) the expected date of resumption.

Once the circumstances allow the beneficiary to resume implementing the *action*, the beneficiary must inform EUSPA immediately and present a request for amendment of the Agreement as provided for in Article II.16.3. This obligation does not apply if the Agreement is terminated in accordance with Articles II.17.1 or points (b) or (c) of Article II.17.2.1.

##### **II.16.2 Suspension of implementation by EUSPA**

###### **II.16.2.1 Grounds for suspension**

EUSPA may suspend the implementation of the *action* or any part thereof:

- (a) if EUSPA has evidence that the beneficiary has committed *substantial errors, irregularities* or *fraud* in the award procedure or while implementing the Agreement or if the beneficiary fails to comply with its obligations under the Agreement;
- (b) if EUSPA has evidence that the beneficiary has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other grants funded by the European Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions and the errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (c) if EUSPA suspects *substantial errors, irregularities, fraud* or breach of obligations committed by the beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred.

#### **II.16.2.2 Procedure for suspension**

**Step 1** — Before suspending implementation of the *action*, EUSPA must send a *formal notification* to the beneficiary:

- (a) informing it of:
  - (i) its intention to suspend the implementation;
  - (ii) the reasons for suspension;
  - (iii) the necessary conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.16.2.1; and
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

**Step 2** — If EUSPA does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the beneficiary informing it of:

- (a) the suspension of the implementation;
- (b) the reasons for suspension; and
- (c) the final conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.16.2.1; or
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.16.2.1.

The suspension takes effect on the day the *formal notification* is received by the beneficiary or on a later date specified in the *formal notification*.

Otherwise, EUSPA must send a *formal notification* to the beneficiary informing it that it is not continuing the suspension procedure.

#### **II.16.2.3 Resuming implementation**

In order to resume the implementation, the beneficiary must meet the notified conditions as soon as possible and must inform EUSPA of any progress made.

If the conditions for resuming the implementation are met or the necessary verifications are carried out, EUSPA must send a *formal notification* to the beneficiary:

- (a) informing it that the conditions for lifting the suspension are met; and
- (b) requiring it to present a request for amendment of the Agreement as provided for in Article II.16.3. This obligation does not apply if the Agreement is terminated in accordance with Articles II.17.1 or points (b), (f) or (g) of Article II.17.2.1.

### **II.16.3 Effects of the suspension**

If the implementation of the *action* can be resumed and the Agreement has not been terminated, an amendment to the Agreement must be made in accordance with Article II.13 in order to:

- (a) set the date on which the *action* is to be resumed;
- (b) extend the duration of the *action*; and
- (c) make other changes necessary to adapt the *action* to the new situation.

The suspension is 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 the period of suspension that relate to the implementation of the suspended *action* or the suspended part of it may not be reimbursed or covered by the grant.

Suspending implementation of the *action* does not affect EUSPA's right to terminate the Agreement in accordance with Article II.17.2, reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

Neither party may claim damages due to suspension by the other party.

## **ARTICLE II.17 – TERMINATION OF THE AGREEMENT**

### **II.17.1 Termination of the Agreement by the beneficiary**

The beneficiary may terminate the Agreement.

The beneficiary must send a *formal notification* of termination to EUSPA, stating:

- (a) the reasons for termination; and
- (b) the date on which the termination takes effect. This date must be set after the *formal notification*.

If the beneficiary does not state the reasons for the termination or if EUSPA considers that the reasons do not justify termination, the Agreement is considered to have been terminated improperly.

The termination takes effect on the day specified in the *formal notification*.

### **II.17.2 Termination of the Agreement by EUSPA**

### **II.17.2.1 Grounds for termination**

EUSPA may terminate the Agreement, if:

- (a) a change to the beneficiary's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Agreement substantially or calls into question the decision to award the grant;
- (b) the beneficiary does not implement the *action* as described in Annex I or it fails to comply with another substantial obligation incumbent on it under the Agreement;
- (c) the implementation of the *action* is prevented or suspended due to *force majeure* or exceptional circumstances and either:
  - (i) resumption is impossible; or
  - (ii) the necessary changes to the Agreement would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;
- (d) the beneficiary or any natural or legal person that assumes unlimited liability for the debts of the beneficiary comes under any of the situations provided for in points (a) or (b) of Article 136 (1) of the Financial Regulation;<sup>7</sup>
- (e) the beneficiary or any *natural or legal person who is a member of the administrative, management or supervisory body of a beneficiary or who has powers of representation, decision or control* over such beneficiary or any natural person working for the beneficiary who is essential for the award or implementation of the grant agreement is subject to any of the situations provided for in points (c), (d), (e), (f), (g) or (h) of Article 136 (1) or to Article 136 (2) of the Financial Regulation;
- (f) EUSPA has evidence that the beneficiary or any *related person* has committed *substantial errors, irregularities or fraud* in the award procedure or while implementing the Agreement, including if the beneficiary or *related person* has submitted false information or failed to provide required information;
- (g) EUSPA has evidence that the beneficiary has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other European Union or Euratom grants awarded to it under similar conditions and such errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (h) EUSPA has sent the beneficiary a *formal notification* asking it to end the participation of its affiliated entity because that entity is in a situation provided for in points (f), (g) or (h) and the beneficiary has failed to request an amendment ending the participation of the entity and reallocating its tasks.

### **II.17.2.2 Procedure for termination**

**Step 1-** Before terminating the Agreement, EUSPA must send a *formal notification* to the beneficiary:

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<sup>7</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

- (a) informing it of:
  - (i) its intention to terminate;
  - (ii) the reasons for termination; and
- (b) requiring it, within 45 calendar days of receiving the formal notification:
  - (i) to submit observations; and
  - (ii) in the case of point (b) of Article II.17.2.1, to inform EUSPA of the measures to ensure compliance with the obligations under the Agreement.

**Step 2** — If EUSPA does not receive observations or decides to pursue the procedure despite the observations it has received, it will send a *formal notification* to the beneficiary informing it of the termination and the date on which it takes effect.

Otherwise, EUSPA must send a *formal notification* to the beneficiary informing it that the termination procedure is not continued.

The termination takes effect:

- (a) for terminations under points (a), (b) and (d) of Article II.17.2.1: on the day specified in the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above);
- (b) for terminations under points (c), (e), (f), (g) and (h) of Article II.17.2.1: on the day after the beneficiary receives the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above).

### **II.17.3 Effects of termination**

#### **II.17.3.1 Effects of terminating the Agreement:**

Within 60 (sixty) calendar days from the day on which the termination takes effect, the beneficiary must submit a request for payment of the balance as provided for in Article I.4.3.

If EUSPA does not receive the request for payment of the balance by the above deadline, only costs which are included in an approved technical report and, where relevant, in an approved financial statement, are reimbursed or covered by the grant.

If the Agreement is terminated by EUSPA because the beneficiary has breached its obligation to submit the request for payment, the beneficiary may not submit any request for payment after termination. In that case the second subparagraph applies.

EUSPA calculates the final grant amount as referred to in Article II.25 and the balance as referred to in Article I.5.4 on the basis of the reports submitted. Only costs incurred before termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination are not taken into account and are not reimbursed or covered by the grant.

EUSPA may reduce the grant in accordance with Article II.25.4 in case of:



- (a) improper termination of the Agreement by the beneficiary within the meaning of Article II.17.1; or
- (b) termination of the Agreement by EUSPA on any of the grounds set out in points (b), (e), (f), (g) and (h) of Article II.17.2.1.

Neither party may claim damages on the grounds that the other party terminated the Agreement.

After termination, the beneficiary's obligations continue to apply, in particular those under Articles I.4, II.6, II.8, II.9, II.14, II.27 and any additional provisions on the use of the results, as set out in the Special Conditions.

#### **ARTICLE II.18 – APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISIONS**

- II.18.1** The Agreement is governed by the applicable European Union law, complemented, where necessary, by the law of Belgium.
- II.18.2** In accordance with Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, has sole jurisdiction to hear any dispute between the European Union and any beneficiary concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably.
- II.18.3** In accordance with Article 299 TFEU, for the purposes of recovery within the meaning of Article II.26, EUSPA may adopt an enforceable decision to impose pecuniary obligations on persons other than States.

An *action* may be brought against such decision before the General Court of the European Union in accordance with Article 263 TFEU.

## **PART B — FINANCIAL PROVISIONS**

### **ARTICLE II.19 – ELIGIBLE COSTS**

#### **II.19.1 Conditions for the eligibility of costs**

*Eligible costs* of the *action* are costs actually incurred by the beneficiary and which meet the following criteria:

- (a) they are incurred within the *implementation period*, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Article I.4.3;
- (b) they are indicated in the estimated budget. The estimated budget is set out in Annex III;
- (c) they are incurred in connection with the *action* as described in Annex I and are necessary for its implementation;
- (d) they are identifiable and verifiable, in particular they are recorded in the beneficiary's accounting records and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the beneficiary's usual cost accounting practices;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified and comply with the principle of sound financial management, in particular regarding economy and efficiency.

#### **II.19.2 Eligible direct costs**

To be eligible, the *direct costs* of the *action* must comply with the eligibility conditions set out in Article II.19.1.

In particular, the following categories of costs are eligible *direct costs*, provided that they satisfy the eligibility conditions set out in Article II.19.1 as well as the following conditions:

- (a) the costs of personnel:
  - (i) the cost of personnel working under an employment contract with the beneficiary or an equivalent appointing act and assigned to the *action*, provided that these costs are in line with the beneficiary's usual policy on remuneration.

Those costs include actual salaries plus social security contributions and other statutory costs included in the remuneration. They may also comprise additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used.

- (ii) The costs of natural persons working under a contract with the beneficiary other than an employment contract (e.g. in-house consultants) or who are seconded to the beneficiary by

a third party against payment may also be included under such personnel costs, provided that the following conditions are fulfilled:

- (1) there must be a written **direct contract** between the natural person (individual) and the beneficiaries;
  - (2) the natural person works under the instructions of the beneficiary and, unless otherwise agreed with the beneficiary through a teleworking agreement, in the premises of the beneficiary;
  - (3) the result of the work belongs to the beneficiary;
  - (4) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the beneficiary; and
  - (5) The remuneration must be based on working hours, rather than on delivering specific outputs/products. (This implies that the beneficiary must keep records of the hours worked for the action.) Costs of natural persons working under a direct contract for a beneficiary must be calculated according to the formula: hourly rate multiplied by the number of actual hours worked on the action where hourly rate:
    - a. if the contract specifies an hourly rate: this hourly rate must be used;
    - b. if the contract states a fixed amount for the services of the natural person and the number of hours to be worked: this global amount must be divided by the number of hours to be worked for the beneficiary under that contract.
- (b) costs of travel and related subsistence allowances, provided that these costs are in line with the beneficiary's usual practices on travel;
- (c) the depreciation costs of equipment or other assets (new or second-hand) as recorded in the beneficiary's accounting statements, provided that the asset:
- (i) is written off in accordance with the international accounting standards and the beneficiary's usual accounting practices; and
  - (ii) has been purchased in accordance with Article II.10.1 if the purchase occurred within the *implementation period*;

The costs of renting or leasing equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

Only the portion of the equipment's depreciation, rental or lease costs corresponding to the *implementation period* and the rate of actual use for the purposes of the *action* may be taken into account when determining the eligible costs. By way of exception, the full cost of purchase of equipment may be eligible under the Special Conditions, if this is justified by the nature of the *action* and the context of the use of the equipment or assets;

- (d) costs of consumables and supplies, provided that they:

- (i) are purchased in accordance with Article II.10.1; and
- (ii) are directly assigned to the *action*;
- (e) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the *action*, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with Article II.10.1;
- (f) costs entailed by *subcontracts* within the meaning of Article II.11, provided that the conditions laid down in Article II.11.1 (a), (b), (c) and (d) are met;
- (g) costs of financial support to third parties within the meaning of Article II.12, provided that the conditions laid down in that Article are met;
- (h) duties, taxes and charges paid by the beneficiary, notably value added tax (VAT), provided that they are included in eligible *direct costs*, and unless specified otherwise in the Agreement.

### II.19.3 Eligible indirect costs

To be eligible, *indirect costs* of the *action* must represent a fair apportionment of the overall overheads of the beneficiary and must comply with the conditions of eligibility set out in Article II.19.1.

Eligible *indirect costs* must be declared on the basis of a flat rate of 7 % of the total eligible *direct costs* unless otherwise specified in Article I.3.2.

### II.19.4 Ineligible costs

In addition to any other costs which do not fulfil the conditions set out in Article II.19.1, the following costs may not be considered eligible:

- (a) return on capital and dividends paid by the beneficiary;
- (b) debt and debt service charges;
- (c) provisions for losses or debts;
- (d) interest owed;
- (e) doubtful debts;
- (f) exchange losses;
- (g) costs of transfers from EUSPA charged by the bank of the beneficiary;
- (h) costs declared by the beneficiary under another action receiving a grant financed from the European Union budget. Such grants include grants awarded by a Member State and financed from the European Union budget and grants awarded by bodies other than EUSPA for the purpose of implementing the European Union budget. In particular, *indirect costs* may not be eligible under a grant for an action awarded to the beneficiary when it is already receiving an operating grant financed from the European Union budget during the period in question;
- (i) contributions in kind from third parties;

- (j) excessive or reckless expenditure;
- (k) deductible VAT.

## **ARTICLE II.20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED**

### **II.20.1 Declaring costs and contributions**

The beneficiary must declare as eligible costs or as a requested contribution:

- (a) for actual costs: the costs it actually incurred for the *action*;
- (b) for unit costs or unit contributions: the amount obtained by multiplying the amount per unit specified in Article I.3.2(ii)a by the actual number of units used or produced;
- (c) for lump sum costs or lump sum contributions: the global amount specified in Article I.3.2(iii) or (c), if the corresponding tasks or part of the *action* as described in Annex I have been implemented properly;
- (d) for flat-rate costs or flat-rate contributions: the amount obtained by applying the flat rate specified in Article I.3.2(iv);
- (e) for unit costs declared on the basis of the beneficiary’s usual cost accounting practices: the amount obtained by multiplying the amount per unit calculated in accordance with the beneficiary’s usual cost accounting practices by the actual number of units used or produced;
- (f) for lump sum costs declared on the basis of the beneficiary’s usual cost accounting practices: the global amount calculated in accordance with its usual cost accounting practices, if the corresponding tasks or part of the *action* have been implemented properly;
- (g) for flat-rate costs declared on the basis of the beneficiary’s usual cost accounting practices: the amount obtained by applying the flat rate calculated in accordance with the beneficiary’s usual cost accounting practices.

### **II.20.2 Records and other documentation to support the costs and contributions declared**

The beneficiary must provide the following if requested to do so in the context of the checks or audits described in Article II.27:

- (a) for actual costs: adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records.

In addition, the beneficiary’s usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements and with the amounts indicated in the supporting documents;

- (b) for unit costs or unit contributions: adequate supporting documents to prove the number of units declared.

The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, to prove the amount declared per unit;

- (c) for lump sum costs or lump sum contributions: adequate supporting documents to prove that the *action* has been properly implemented.

The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, to prove the amount declared as a lump sum;

- (d) for flat-rate costs or flat-rate contributions: adequate supporting documents to prove the eligible costs or requested contribution to which the flat rate applies.

The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, for the flat rate applied;

- (e) for unit costs declared on the basis of the beneficiary's usual cost accounting practices: adequate supporting documents to prove the number of units declared;
- (f) for lump sum costs declared on the basis of the beneficiary's usual cost accounting practices: adequate supporting documents to prove that the *action* has been properly implemented;
- (g) for flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices: adequate supporting documents to prove the eligible costs to which the flat rate applies.

### **II.20.3 Conditions to determine the compliance of cost accounting practices**

**II.20.3.1** In the case of points (e), (f) and (g) of Article II.20.2, the beneficiary does not need to identify the actual eligible costs covered, but it must ensure that the cost accounting practices used for the purpose of declaring eligible costs are in compliance with the following conditions:

- (a) the cost accounting practices used constitute its usual cost accounting practices and are applied in a consistent manner, based on objective criteria independent from the source of funding;
- (b) the costs declared can be directly reconciled with the amounts recorded in its general accounts; and
- (c) the categories of costs used for the purpose of determining the costs declared are exclusive of any ineligible cost or costs covered by other forms of grant as provided for in Article I.3.2.

**II.20.3.2** If the Special Conditions so provide, the beneficiary may submit to EUSPA a request asking it to assess the compliance of its usual cost accounting practices. If required by the Special Conditions, the request must be accompanied by a certificate on the compliance of the cost accounting practices ('certificate on the compliance of the cost accounting practices').

The certificate on the compliance of the cost accounting practices must be:

- (a) produced by an approved auditor or, if the beneficiary is a public body, by a competent and independent public officer; and
- (b) drawn up in accordance with Annex VII.

The certificate must certify that the beneficiary's cost accounting practices used for the purpose of declaring eligible costs comply with the conditions laid down in Article II.20.3.1 and with the additional conditions that may be laid down in the Special Conditions.

**II.20.3.3** If EUSPA has confirmed that the beneficiary's usual cost accounting practices are in compliance, costs declared in application of these practices may not be challenged *ex post*, if:

- (a) the practices actually used comply with those approved by EUSPA; and
- (b) the beneficiary did not conceal any information for the purpose of the approval of its cost accounting practices.

#### **ARTICLE II.21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARY**

If the Special Conditions contain a provision on entities affiliated to the beneficiary, costs incurred by such an entity are eligible, if:

- (a) they satisfy the same conditions under Articles II.19 and II.20 as apply to the beneficiary; and
- (b) the beneficiary ensures that the conditions applicable to it under Articles II.4, II.5, II.6, II.8, II.10, II.11 and II.27 are also applicable to the entity.

#### **ARTICLE II.22 – BUDGET TRANSFERS**

The beneficiary is allowed to adjust the estimated budget set out in Annex III by transfers between the different budget categories, if the *action* is implemented as described in Annex I. This adjustment does not require an amendment of the Agreement as provided for in Article II.13.

However, the beneficiary may not add costs relating to *subcontracts* not provided for in Annex 1, unless such additional *subcontracts* are approved by EUSPA in accordance with Article II.11.1(d).

The first two subparagraphs do not apply to amounts which, as provided for in Article I.3.2(iii), take the form of lump sums.

#### **ARTICLE II.23 – NON-COMPLIANCE WITH THE REPORTING OBLIGATIONS**

EUSPA may terminate the Agreement as provided for in Article II.17.2.1(b) and may reduce the grant as provided for in Article II.25.4 if the beneficiary:

- (a) did not submit a request for interim payment or payment of the balance accompanied by the documents referred to in Articles I.4.2 or I.4.3 within 60 calendar days following the end of the corresponding reporting period; and
- (b) still fails to submit such a request within further 60 calendar days following a written reminder sent by EUSPA.

#### **ARTICLE II.24 – SUSPENSION OF PAYMENTS AND TIME LINE FOR PAYMENT**

## **II.24.1 Suspension of payments**

### **II.24.1.1 Grounds for suspension**

EUSPA may, at any time during the implementation of the Agreement, suspend the pre-financing payments, interim payments or payment of the balance:

- (a) if EUSPA has evidence that the beneficiary has committed *substantial errors, irregularities or fraud* in the award procedure or while implementing the Agreement or if the beneficiary fails to comply with its obligations under the Agreement;
- (b) if EUSPA has evidence that the beneficiary has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other grants funded by the European Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions and such errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (c) if EUSPA suspects *substantial errors, irregularities, fraud* or breach of obligations committed by the beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred.

### **II.24.1.2 Procedure for suspension**

**Step 1** — Before suspending payments, EUSPA must send a *formal notification* to the beneficiary:

- (a) informing it of:
  - (i) its intention to suspend payments;
  - (ii) the reasons for suspension;
  - (iii) in the cases referred to in points (a) and (b) of Article II.24.1.1, the conditions that need to be met for payments to resume; and
- (b) inviting it to submit observations within 30 calendar days of receiving the *formal notification*.

**Step 2** — If EUSPA does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the beneficiary informing it of:

- (a) the suspension of payments;
- (b) the reasons for suspension;
- (c) the final conditions under which payments may resume in the cases referred to in points (a) and (b) of Article II.24.1.1;
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.24.1.1.

The suspension takes effect on the day EUSPA sends *formal notification* of suspension (Step 2).



Otherwise, EUSPA must send a *formal notification* to the beneficiary informing it that it is not continuing with the suspension procedure.

### **II.24.1.3 Effects of suspension**

During the period of suspension of payments the beneficiary is not entitled to submit any requests for payments and supporting documents referred to in Articles I.4.2 and I.4.3.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments in accordance with the schedule laid down in Article I.4.1.

The suspension of payments does not affect the right of the beneficiary to suspend the implementation of the *action* as provided for in Article II.16.1 or to terminate the Agreement as provided for in Article II.17.1.

### **II.24.1.4 Resuming payments**

In order for EUSPA to resume payments, the beneficiary must meet the notified conditions as soon as possible and must inform EUSPA of any progress made.

If the conditions for resuming payments are met, the suspension will be lifted. EUSPA will send a *formal notification* to the beneficiary informing it of this.

## **II.24.2 Suspension of the time limit for payments**

**II.24.2.1** EUSPA may at any moment suspend the time limit for payment specified in Articles I.5.2, I.5.3 and I.5.4 if a request for payment cannot be approved because:

- (a) it does not comply with the Agreement;
- (b) the appropriate supporting documents have not been produced; or
- (c) there is a doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.

**II.24.2.2** EUSPA must send a *formal notification* to the beneficiary informing it of:

- (a) the suspension; and
- (b) the reasons for the suspension.

The suspension takes effect on the day EUSPA sends the *formal notification*.

**II.24.2.3** 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 beneficiary may request EUSPA if the suspension will continue.

If the payment deadline has been suspended because the technical reports or financial statements do not comply with the Agreement and the revised report or statement is not submitted or was submitted but is also rejected, EUSPA may terminate the Agreement as provided for in Article II.17.2.1(b) and reduce the grant as provided for in Article II.25.4.

## **ARTICLE II.25 – CALCULATION OF THE FINAL AMOUNT OF THE GRANT**

The final amount of the grant depends on the extent to which the *action* has been implemented in accordance with the terms of the Agreement.

The final amount of the grant is calculated by EUSPA at the time of the payment of the balance. The calculation involves the following steps:

Step 1 — Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate and lump sum contributions

Step 2 — Limit to the *maximum amount of the grant*

Step 3 — Reduction due to the no-profit rule

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

### **II.25.1 Step 1 — Application of the reimbursement rate to the eligible costs**

This step is applied as follows:

- (a) If, as provided for in Article I.3.2(i), the grant takes the form of the reimbursement of eligible costs actually incurred, the reimbursement rate specified in that Article is applied to the eligible costs of the *action* approved by EUSPA for the corresponding categories of costs, for the beneficiary and its affiliated entities;
- (b) If, as provided for in Article I.3.2(ii) to (v), the grant takes the form of the reimbursement of eligible unit costs, lump sum costs or flat rate costs, the reimbursement rate specified in that Article is applied to the eligible costs of the *action* approved by EUSPA for the corresponding categories of costs, for the beneficiary and its affiliated entities;

### **II.25.2 Step 2 — Limit to *maximum amount of the grant***

The total amount paid to the beneficiary by EUSPA may in no circumstances exceed the *maximum amount of the grant*.

If the amount obtained following Step 1 is higher than this maximum amount, the final amount of the grant is limited to the latter.

### II.25.3 Step 3 — Reduction due to the no-profit rule

The grant may not produce a profit for the beneficiary, unless specified otherwise in the Special Conditions.

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

The total eligible costs of the *action* are the consolidated total eligible costs approved by EUSPA for the categories of costs reimbursed in accordance with Article I.3.2.

The total receipts of the *action* are the consolidated total receipts established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the beneficiary.

The following are considered receipts:

- (a) income generated by the *action*;
- (b) financial contributions given by third parties to the beneficiary or to an affiliated entity, if they are specifically assigned by the third parties to the financing of the eligible costs of the *action* reimbursed by EUSPA in accordance with Article I.3.2(i).

The following are not considered receipts:

- (a) financial contributions by third parties, if they may be used to cover costs other than the eligible costs under the Agreement;
- (b) financial contributions by third parties with no obligation to repay any amount unused at the end of the *implementation period*;

If there is a profit, it will be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the *action* approved by EUSPA for the categories of costs referred to in Article I.3.2(i). This deduction will be applied on the amount calculated following Steps 1 and 2.

### II.25.4 Step 4 — Reduction due to improper implementation or breach of other obligations

EUSPA may reduce the *maximum amount of the grant* if the *action* has not been implemented properly as described in Annex I (i.e. if it has not been implemented or has been implemented poorly, partially or late), or if another obligation under the Agreement has been breached.

The amount of the reduction will be proportionate to the degree to which the *action* has been implemented improperly or to the seriousness of the breach.

Before EUSPA reduces the grant, it must send a *formal notification* to the beneficiary:

- (a) informing it of:
  - (i) its intention to reduce the *maximum amount of the grant*;
  - (ii) the amount by which it intends to reduce the grant;
  - (iii) the reasons for reduction; and
  
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

If EUSPA does not receive any observations or decides to pursue reduction despite the observations it has received, it will send a *formal notification* informing the beneficiary of its decision.

If the grant is reduced, EUSPA must 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) from the *maximum amount of the grant*.

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

- (a) the amount obtained following Steps 1 to 3; or
- (b) the reduced grant amount following Step 4.

## **ARTICLE II.26 - RECOVERY**

### **II.26.1 Recovery**

Where an amount is to be recovered under the terms of the Agreement, the beneficiary must repay EUSPA the amount in question.

The beneficiary is responsible for the repayment of any amount unduly paid by EUSPA as a contribution towards the costs incurred by its affiliated entities.

### **II.26.2 Recovery procedure**

Before recovery, EUSPA must send a *formal notification* to the beneficiary:

- (a) informing it of its intention to recover the amount unduly paid;
- (b) specifying the amount due and the reasons for recovery; and
- (c) inviting the beneficiary to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, EUSPA decides to pursue the recovery procedure, EUSPA may confirm recovery by sending a *formal notification* to the beneficiary consisting of a debit note, specifying the terms and the date for payment.

If payment has not been made by the date specified in the debit note, EUSPA will recover the amount due:

- (a) by offsetting it, without the beneficiary's prior consent, against any amounts owed to the beneficiary by EUSPA or an executive agency (from the European Union or the European Atomic Energy Community (Euratom) budget) ('offsetting');

In exceptional circumstances, to safeguard the financial interests of the European Union, EUSPA may offset before the due date.

An action may be brought against such offsetting before the General Court of the European Union in accordance with Article 263 TFEU;

- (b) by drawing on the financial guarantee where provided for in accordance with Article I.5.2 ('drawing on the financial guarantee');
- (c) by taking legal action as provided for in Article II.18.2 or in the Special Conditions or by adopting an enforceable decision as provided for in Article II.18.3.

### **II.26.3 Interest on late payment**

If payment is not made by the date in the debit note, the amount to be recovered will be increased by late-payment interest at the rate set out in Article I.5.6 from the day following the date for payment in the debit note up to and including the date EUSPA receives full payment of the amount.

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

### **II.26.4 Bank charges**

Bank charges incurred in the recovery process must be borne by the beneficiary, unless Directive 2007/64/EC<sup>8</sup> applies.

## **ARTICLE II.27 – CHECKS, AUDITS AND EVALUATIONS**

### **II.27.1 Technical and financial checks, audits, interim and final evaluations**

The European Commission /EUSPA may, during the implementation of the *action* or afterwards, carry out technical and financial checks and audits to determine that the beneficiary is implementing the *action* properly and is complying with the obligations under the Agreement. It may also check the beneficiary's statutory records for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

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<sup>8</sup> Directive 2007/64/EC<sup>8</sup> 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.

Information and documents provided as part of checks or audits must be treated on a confidential basis.

In addition, the European Commission/ EUSPA may carry out an interim or final evaluation of the impact of the *action*, measured against the objective of the European Union programme concerned.

Checks, audits or evaluations may be carried out either directly by the European Commission /EUSPA's own staff or by any other outside body authorised to do so on its behalf. Upon beneficiary's request, the European Commission/EUSPA may inform the beneficiary of the identity of outside bodies, provided that the conditions for transfer of personal data according to Article 9(b) of Regulation (EU) No 2018/1725 are met. The beneficiaries have right to object to the appointment of outside bodies on grounds of conflict of interests or on grounds of commercial confidentiality. Any such objection must be, however, duly substantiated and supported by evidences to enable the European Commission/EUSPA to assess the merits of such an objection and if shared, select another outside body.

The European Commission /EUSPA may initiate such checks, audits or evaluations during the implementation of the Agreement and during a period of five years starting from the date of payment of the balance. This period is limited to three years if the *maximum amount of the grant* is not more than EUR 60 000.

The check, audit or evaluation procedures are considered to be initiated on the date of receipt of the letter of the European Commission /EUSPA announcing it.

If the audit is carried out on an affiliated entity, the beneficiary must inform that affiliated entity.

### **II.27.2 Duty to keep documents**

The beneficiary shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by their respective national law and under the conditions laid down therein, during a period of five years starting from the date of payment of the balance.

The period during which documents must be kept is limited to three years if the *maximum amount of the grant* is not more than EUR 60 000.

The periods set out in the first and second subparagraphs are longer if there are ongoing audits, appeals, litigation or pursuit of claims concerning the grant, including in the cases referred to in Article II.27.7. In such cases, the beneficiary must keep the documents until such audits, appeals, litigation or pursuit of claims have been closed.

### **II.27.3 Obligation to provide information**

The beneficiary must provide any information, including information in electronic format, requested by EUSPA or by any other outside body authorised by EUSPA.

If the beneficiary does not comply with the obligation set out in the first subparagraph, EUSPA may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

#### **II.27.4 On-the-spot visits**

During an on-the-spot visit, the beneficiary must allow EUSPA staff and outside personnel authorised by EUSPA to have access to the sites and premises where the *action* is or was carried out, and to all the necessary information, including information in electronic format.

The beneficiary must ensure that the information is readily available at the moment of the on-the-spot visit and that information requested is handed over in an appropriate form.

If the beneficiary refuses to provide access to the sites, premises and information as required in the first and second subparagraphs, EUSPA may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

#### **II.27.5 Contradictory audit procedure**

On the basis of the findings made during the audit, a provisional report ('draft audit report') must be drawn up. It must be sent by EUSPA or its authorised representative to the beneficiary, which must have 30 (thirty) calendar days from the date of receipt to submit observations. The final report ('final audit report') must be sent to the beneficiary within 60 calendar days of expiry of the time limit for submission of observations.

#### **II.27.6 Effects of audit findings**

On the basis of the final audit findings, EUSPA may take the measures it considers necessary, including recovery of all or part of the payments made by it, as provided for in Article II.26.

In the case of final audit findings after the payment of the balance, the amount to be recovered corresponds to the difference between the revised final amount of the grant, determined in accordance with Article II.25, and the total amount paid to the beneficiary under the Agreement for the implementation of the *action*.

#### **II.27.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations**

**II.27.7.1** EUSPA may extend audit findings from other grants to this grant if:

- (a) the beneficiary is found to have committed systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations in other EU or Euratom grants awarded under similar conditions and such errors, *irregularities*, *fraud* or breach have a material impact on this grant; and
- (b) the final audit findings are sent to the beneficiary through a *formal notification*, together with the list of grants affected by the findings within the period referred to in Article II.27.1

The extension of findings may lead to:

- (a) the rejection of costs as ineligible;
- (b) reduction of the grant as provided for in Article II.25.4;
- (c) recovery of undue amounts as provided for in Article II.26;
- (d) suspension of payments as provided for in Article II.24.1;
- (e) suspension of the *action* implementation as provided for in Article II.16.2;
- (f) termination as provided for in Article II.17.2.

**II.27.7.2** EUSPA shall send a *formal notification* to the beneficiary informing it of the systemic or recurrent errors and of its intention to extend the audit findings, together with the list of grants affected.

- (a) If the findings concern eligibility of costs the procedure is as follows:

**Step 1** — The *formal notification* must include:

- (i) an invitation to submit observations on the list of grants affected by the findings;
- (ii) a request to submit revised financial statements for all grants affected;
- (iii) where possible, the correction rate for extrapolation established by EUSPA to calculate the amounts to be rejected on the basis of the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations, if the beneficiary:
  - considers that the submission of revised financial statements is not possible or practicable;
  - or
  - will not submit revised financial statements.

**Step 2** — The beneficiary has 60 calendar days from when it receives the *formal notification* to submit observations and revised financial statements or to propose a duly substantiated alternative correction method. This period may be extended by EUSPA in justified cases.

**Step 3** — If the beneficiary submits revised financial statements that take account of the findings EUSPA will determine the amount to be corrected on the basis of those revised statements.

If the beneficiary proposes an alternative correction method and EUSPA accepts it, EUSPA must send a *formal notification* to the beneficiary informing it:

- (i) that it accepts the alternative method;



- (ii) of the revised eligible costs determined by applying this method.

Otherwise EUSPA must send a *formal notification* to the beneficiary informing it:

- (i) that it does not accept the observations or the alternative method proposed;
- (ii) of the revised eligible costs determined by applying the extrapolation method initially notified to the beneficiary.

If the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the beneficiary and approved by EUSPA or on the basis of the revised eligible costs after extrapolation; and
- (ii) the total amount paid to the beneficiary under the Agreement for the implementation of the *action*;

(b) If the findings concern improper implementation or a breach of another obligation the procedure is as follows:

**Step 1** — The *formal notification* must include:

- (i) an invitation to the beneficiary to submit observations on the list of grants affected by the findings and
- (ii) the correction flat rate EUSPA intends to apply to the *maximum amount of the grant* or to part of it, according to the principle of proportionality.

**Step 2** — The beneficiary has 60 calendar days from receiving the *formal notification* to submit observations or to propose a duly substantiated alternative flat-rate.

**Step 3** — If EUSPA accepts the alternative flat rate proposed by the beneficiary, it must send a *formal notification* to the beneficiary informing it:

- (i) that it accepts the alternative flat-rate;
- (ii) of the corrected grant amount by applying this flat rate.

Otherwise EUSPA must send a *formal notification* to the beneficiary informing it:

- (i) that it does not accept the observations or the alternative flat rate proposed;
- (ii) of the corrected grant amount by applying the flat rate initially notified to the beneficiary.

If the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant after flat-rate correction; and
- (ii) the total amount paid to the beneficiary under the Agreement for the implementation of the *action*.

#### **II.27.8 Checks and inspections by OLAF**

The European Anti-Fraud Office (OLAF) has the same rights as EUSPA, particularly the right of access, for the purpose of checks and investigations.

Under Council Regulation (Euratom, EC) No 2185/96<sup>9</sup> and Regulation (EU, Euratom) No 883/2013<sup>10</sup> OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against *fraud* and other *irregularities*.

Where appropriate, OLAF findings may lead to EUSPA recovering amounts from the beneficiary.

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

#### **II.27.9 Checks and audits by the European Court of Auditors and EPPO**

The European Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') have the same rights as the European Commission/EUSPA, particularly the right of access, for the purpose of checks and audits.

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<sup>9</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

<sup>10</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).

**ANNEX VIII – PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS**

**NAME OF APPLICANT:**

Items	Definition/ Description of pre-existing intellectual property right	Owner	Specific limitations and/or conditions for implementation