

**GRANT AGREEMENT FOR AN ACTION WITH MULTIPLE BENEFICIARIES**

**AGREEMENT NUMBER – EUSPA/GRANT/02/2022-X**

This Grant 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 coordinator”, represented for the purposes of signature of this Agreement by [function, forename and surname].

and the following other beneficiaries:

2. full official name - established in country

3. full official name - established in country

idem for each beneficiary

duly represented for the signature of the Agreement by the coordinator by virtue of the mandate [s] included in Annex IV,

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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

Party Initial	EUSPA Initial

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*
- Annex II General Conditions (hereinafter referred to as “the General Conditions”)
- Annex III Estimated budget of the *action* (to be provided by the beneficiary)
- Annex IV Mandate[s] provided to the coordinator by the other beneficiary[ies]
- Annex V Model technical report: **not applicable**
- Annex VI Model financial statement
- Annex VII Model terms of reference for the certificate on the financial statements
- Annex VIII Model terms of reference for the certificate on the compliance of the cost accounting practices: **not applicable**
- Annex IX List of pre-existing intellectual property rights
- Annex X Call for Proposals EUSPA/GRANT/02/20XX
- Annex XI Unit cost rates
- Annex XII EUSPA letter XXX (letter accepting early start of the work before signature)

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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Party Initial	EUSPA Initial

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## SPECIAL CONDITIONS

### ARTICLE I.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 title in bold]** as described in Annex I.

By signing the Agreement, the beneficiaries accept the grant and agree to implement the *action*, acting on their own responsibility.

### ARTICLE I.2 – ENTRY INTO FORCE OF THE AGREEMENT AND IMPLEMENTATION PERIOD

**I.2.1** The Agreement enters into force on the date on which the last party signs.

**I.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*

**I.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 I.3 - MAXIMUM AMOUNT AND FORM OF THE GRANT

**I.3.1** The **maximum amount of the grant** is EUR **[insert amount]**.

**I.3.2** The grant takes **the form of:**

the reimbursement 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**

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- (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 PAYMENT 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 coordinator 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.

The request must include the following:

- (a) an interim report on the implementation of the *action* (“interim 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) an interim financial statement (“interim financial statement”). The interim financial statement must include a consolidated statement as well as a breakdown of the amounts claimed by each beneficiary and its affiliated entities.

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The interim financial statement must be drawn up in accordance with the structure of the estimated budget set out in Annex III and with Annex VI. 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;

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

Each 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 VII. The certificate must certify that the costs declared in the individual financial statement by the beneficiary concerned 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 coordinator must submit a request for payment of the balance within 60 (sixty) calendar days following the end of the 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).

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- (b) a final financial statement (“final financial statement”). The final financial statement must include a consolidated statement as well as a breakdown of the amounts claimed by each beneficiary and its affiliated entities for the last reporting period.

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

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

Each 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, each 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”).

This statement must include a consolidated financial statement and a breakdown of the amounts declared or requested by each beneficiary and its affiliated entities, aggregating the financial statements already submitted previously and indicating the receipts referred to in Article II.25.3 for each beneficiary and its affiliated entities.

The summary financial statement must be drawn up in accordance with Annex VI;

- (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 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 VII. The certificate must certify that the costs declared in the final financial statement by the beneficiary concerned 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.

The coordinator must certify that the information provided in the request for payment of the balance is full, reliable and true.

The coordinator 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.

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In addition, the coordinator must 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.

Beneficiaries 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 *Official Journal of the European Union*, determined over the corresponding reporting period (available at

<http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html> ).

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/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)), determined over the corresponding reporting period.

Beneficiaries and affiliated entities with general accounts in Euro must convert costs incurred in another currency into euro according to their usual accounting practices.

**I.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**

**I.5.1 Payments to be made**

EUSPA must make the following payments to the coordinator:

- one pre-financing payment of an amount equal to [insert percentage]% of the amount of the grant set in Article I.3.1;
- one interim payment of an amount of up to [insert percentage]% of the amount of the grant, 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.

**I.5.2 Pre-financing payment**

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The aim of the pre-financing is to provide the beneficiaries with a float. It 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 must make the pre-financing payment of EUR [insert amount] to the coordinator 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 stability of the beneficiary. Would 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 coordinator 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 a beneficiary. EUSPA must release the guarantee within the following month.

### **I.5.3 Interim payment**

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

EUSPA must pay the coordinator the amount due as interim payment within 90 (ninety) calendar days from when EUSPA receives the documents referred to in Article I.4.2, 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 accompanying 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 [insert percentage]% of the *maximum amount of the grant*

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

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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, beneficiaries and 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 must be deducted from the amount obtained following Step 1.

**I.5.3.3 Step 3 — Limiting the amount to [insert percentage]% of the *maximum amount of the grant***

The total amount of pre-financing and of the interim payment must not exceed 70% 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 beneficiaries for the implementation of the *action*.

If the total amount of earlier payment(s) 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 payment(s) 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 receiving 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 is determined 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 total EU contribution indicated, for that beneficiary, in the estimated budget in Annex III.

**I.5.5 Notification of amounts due**

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

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

For the payment of the balance, it 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 beneficiaries are 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 all beneficiaries are Member States of the European Union (including regional and local government authorities and other public bodies acting in the name and on behalf of the Member State for the purpose of the Agreement).

The suspension of the time limit for payment in accordance with Article II.24.2 or of payment by EUSPA in accordance with Article II.24.1 may not be considered as 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, when the calculated interest is lower than or equal to EUR 200, it must be paid to the coordinator only upon request submitted 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;

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- (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 coordinator**

EUSPA must make payments to the coordinator. Payments to the coordinator discharge EUSPA from its payment obligation.

### **ARTICLE I.6 – BANK ACCOUNT FOR PAYMENTS**

All payments must be made to the coordinator’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 I.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 Development of EUSPA.

#### **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 Development Department  
Janovského 438/2  
17000 Prague 7  
Czech Republic  
E-mail address: market@euspa.europa.eu

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

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

\_\_\_\_\_

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

Party Initial	EUSPA Initial



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

**ARTICLE I.8 — ENTITIES AFFILIATED TO THE BENEFICIARIES**

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 license or sub-license to third parties for the same purposes above mentioned.

The beneficiaries must 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.

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**ARTICLE I.10 – OBLIGATION TO CONCLUDE AN INTERNAL CO-OPERATION AGREEMENT**

The beneficiaries must conclude an internal cooperation agreement including provisions about:

- their operation and co-ordination and
- all internal aspects of the management of the beneficiaries and the implementation of the *action*.

**ARTICLE I.11 — SPECIAL PROVISIONS ON THE FINANCIAL RESPONSIBILITY FOR RECOVERIES**

As an exception to point (c) of the third paragraph of Article II.26.3, the coordinator is jointly and severally liable for repaying any debt under the Agreement up to the *maximum amount of the grant*. The beneficiaries are severally liable up to the amount of their own debt, including any amount unduly paid by EUSPA as a contribution towards the costs incurred by its affiliated entities. The coordinator is also jointly and severally liable for interest on late payment, when applicable.

**ARTICLE I.12 – 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.13 — 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 coordinator

[function/forename/surname]

For EUSPA

Rodrigo da Costa, Executive Director

Party Initial	EUSPA Initial

[signature]

Done in [place], [date]

In duplicate in English.

[signature]

Done in Prague, on [date]

Party Initial	EUSPA Initial

## ANNEX II

### GENERAL CONDITIONS

#### PART A – LEGAL AND ADMINISTRATIVE PROVISIONS

##### ARTICLE II.1 – DEFINITIONS

The following definitions (indicated in *italics* in the text) apply for the purpose of the Agreement:

**‘Action’**: the set of activities/ the project, for which the grant is awarded, to be implemented by the beneficiaries 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 a 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 material 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 a compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’**: any intentional act or omission affecting the European 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 I.2.2;

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**‘Indirect costs’:** those costs which are not specific costs directly linked to the implementation of the action and can therefore not 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 a 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 material, 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 right of ownership, licence right and/or 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*.

**‘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 Union’s budget.

## ARTICLE II.2 – GENERAL OBLIGATIONS AND ROLES OF THE BENEFICIARIES

### II.2.1 General obligations and role of the beneficiaries

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The beneficiaries:

- (a) are jointly and severally liable for carrying out the *action* in accordance with the Agreement. If a beneficiary fails to implement its part of the *action*, the other beneficiaries become responsible for implementing this part (but without so increasing the *maximum amount of the grant*);
- (b) must comply jointly or individually with any legal obligations they are bound by under applicable EU, international and national law;
- (c) must make appropriate internal arrangements to implement the *action* properly. The arrangements must be consistent with the terms of the Agreement; as provided by Article I.10 in the Special Conditions, those arrangements must take the form of an internal co-operation agreement between the beneficiaries.

**II.2.2 General obligations and role of each beneficiary**

Each beneficiary must:

- (a) inform the coordinator immediately of any events or circumstances of which the beneficiary is aware, that are likely to affect or delay the implementation of the action;
- (b) inform the coordinator 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;
- (c) submit in due time to the coordinator:
  - (i) the data needed to draw up the reports, financial statements and other documents provided for in the Agreement;
  - (ii) all the necessary documents in the event of audits, checks or evaluation in accordance with Article II.27.
  - (iii) any other information to be provided to EUSPA according to the Agreement, except if the Agreement requires such information to be submitted directly by the beneficiary.

**II.2.3 General obligations and role of the coordinator**

The coordinator:

- (a) must monitor the implementation of the *action* in order to make sure that the *action* is implemented in accordance with the terms of the Agreement;

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(b) is the intermediary for all communications between the beneficiaries and EUSPA, except if provided otherwise in the Agreement, and, in particular, the coordinator:

- (i) must immediately inform EUSPA:
  - of any change in the name, address, legal representative of any of the beneficiaries or of their affiliated entities;
  - of any change in the legal, financial, technical, organisational or ownership situation of any of the beneficiaries or of their affiliated entities;
  - of any events or circumstances of which the coordinator is aware, that are likely to affect or delay the implementation of the *action*.
- (ii) is responsible for supplying all documents and information required under the Agreement to EUSPA, except if provided otherwise in the Agreement; where information is required from the other beneficiaries, the coordinator is responsible for obtaining and verifying this information before passing it on to EUSPA;
- (c) must make the appropriate arrangements for providing any financial guarantees required under the Agreement;
- (d) must draw up the requests for payment and the reports in accordance with the Agreement;
- (e) if it is designated as the sole recipient of payments on behalf of all of the beneficiaries, it must ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay;
- (f) is responsible for providing all the necessary documents in the event of checks and audits initiated before the payment of the balance, and in the event of evaluation in accordance with Article II.27.

The coordinator may not subcontract any part of its tasks to the other beneficiaries or to any other party.

## ARTICLE II.3 – COMMUNICATIONS BETWEEN THE PARTIES

### II.3.1 Form and means of communications

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.

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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 refers to the date when the communication was sent.

E-mail is considered to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.7. The sending party must be able to prove the date of dispatch. In case of non-delivery report, the sending party must make every effort to ensure the actual receipt of the communication by the other party by e-mail 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 any of the beneficiaries, 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 beneficiaries 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 INTERESTS

**II.5.1** The beneficiaries must take all necessary measures to prevent any situation of *conflict of interests*.

**II.5.2** The beneficiaries must inform EUSPA without delay of any situation constituting or likely to lead to a *conflict of interests*. They 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

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- 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 not use *confidential information and documents* for any reason other than fulfilling their obligations under the Agreement without 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 in 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 processors (the beneficiaries) 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 beneficiaries’ 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.

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

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- II.7.4** The beneficiaries shall have the right to request from the data controller access to, rectification or erasure of their 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 beneficiaries 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 beneficiaries are required to process any personal data (acting as data processors), the beneficiaries 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 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.

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- 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 beneficiaries 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 beneficiaries 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 European Union emblem**

Unless EUSPA requests or agrees otherwise, any communication or publication related to the *action*, made by the beneficiaries jointly or individually, 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/EUSPA emblem.

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

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

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For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the beneficiaries 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 related to the *action*, made by the beneficiaries jointly or individually 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 beneficiaries

The beneficiaries retain 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 beneficiaries 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 beneficiaries must ensure that they or their 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 beneficiaries grant the European Commission and EUSPA the following rights to use the results of the *action*:

- (a) use for its own purposes, and in particular, making available to persons working for EUSPA, European Commission, other European Union institutions, agencies and bodies and to Member States' institutions, as well as, copying and reproducing in whole or in part and in 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;

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- (c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including the making available to the public of the results 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 the 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 the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent 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, "reuse" and "document" have the meaning given to it by this Decision.

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 beneficiaries 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*. Unless specified otherwise in the Special Conditions, 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 when 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.'

Granting rights of use to the European Commission and EUSPA does not affect its confidentiality obligations under Article II.6 nor the obligation of the beneficiaries under Article II.3.1.

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

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**II.10.1** If the implementation of the *action* requires the procurement of goods, works or services, the beneficiaries 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, they must avoid any *conflict of interests*.

The beneficiaries must ensure that the Commission/EUSPA, the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under Article II.27 also towards their contractors.

**II.10.2** Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2004/18/EC<sup>5</sup> or ‘contracting entities’ within the meaning of Directive 2004/17/EC<sup>6</sup> must comply with the applicable national public procurement rules.

The beneficiaries must ensure that the conditions applicable to them under Articles II.4, II.5, II.6 and II.9 are also applicable to the contractor.

**II.10.3** The beneficiaries remain solely responsible for carrying out the *action* and for compliance with the provisions of the Agreement.

**II.10.4.** If the beneficiaries breach their 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).

If the beneficiaries breach their 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** Beneficiaries may subcontract tasks forming part of the *action*, provided that, in addition to the conditions specified in Article II.10, the following conditions are complied with:

- (a) subcontracting does not cover core tasks of the *action*;
- (b) recourse to subcontracting is justified having regard to 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 coordinator and approved by EUSPA. Such an approval may be given by EUSPA:

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<sup>5</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts

<sup>6</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

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(i) before any recourse to subcontracting, if the beneficiaries request an amendment in accordance with 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 breach the principle of equal treatment of applicants;

(e) the beneficiaries ensure that the conditions applicable to them under Article II.8 are also applicable to the subcontractor.

**II.11.2** If the beneficiaries breach their 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 beneficiaries breach their 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 beneficiaries have to give financial support to third parties, the beneficiaries 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 achieving the objective of the *action* as specified in Annex I would otherwise be impossible or overly difficult;
- (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 beneficiaries must give such financial support in accordance with the conditions specified in Annex I. Under those conditions, the following information must at least be stated:

- (a) the eligibility and award criteria;
- (b) the amount of the prize;
- (c) the payment arrangements.

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**II.12.3** The beneficiaries must ensure that the conditions applicable to them 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 AGREEMENT**

**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** A request for amendment on behalf of the beneficiaries must be submitted by the coordinator. If a change of coordinator is requested without its agreement, the request must be submitted by all other beneficiaries and must be accompanied by the opinion of the coordinator or proof that this opinion has been requested in writing.

**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 beneficiaries may not assign any of their claims for payment against EUSPA to any third party, except if approved by EUSPA on the basis of a reasoned, written request by the coordinator made on behalf of the beneficiaries.

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 beneficiaries from their obligations towards EUSPA.

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**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 the implementation by the beneficiaries**

The coordinator, on behalf of the beneficiaries, 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 coordinator 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 resuming the implementation of the *action* the coordinator 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 or the participation of a beneficiary is terminated in accordance with Articles II.17.1, II.17.2 or points (c) or (d) of Article II.17.3.1.

**II.16.2 Suspension of the 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 a beneficiary has committed *substantial errors, irregularities or fraud* in the award procedure or in the implementation of the Agreement or if a beneficiary fails to comply with its obligations under the Agreement;
- (b) if EUSPA has evidence that a beneficiary has committed, in other grants funded by the European Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions, systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations that have a material impact on this grant; or

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- (c) if EUSPA suspects *substantial errors, irregularities, fraud* or breach of obligations committed by a beneficiary in the award procedure or in the implementation of 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 coordinator:

- (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 (thirty) 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 coordinator informing it of:

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

The coordinator must immediately inform the other beneficiaries of the suspension. The suspension takes effect five calendar days after the *formal notification* is received by the coordinator or on a later date specified in the *formal notification*.

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

**II.16.2.3 Resuming the implementation**

In order to resume the implementation, the beneficiaries must endeavour to 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 coordinator:

- (a) informing it that the conditions for lifting the suspension are met and

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(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 or the participation of a beneficiary is terminated in accordance with Articles II.17.1, II.17.2 or points (c), (g) or (h) of Article II.17.3.1.

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

If the implementation of the *action* can be resumed and the Agreement is not 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, for the implementation of the suspended *action* or the suspended part of it, may not be reimbursed or covered by the grant.

Suspension of the *action* implementation does not affect EUSPA’s right to terminate the Agreement or participation of a beneficiary in accordance with Article II.17.3, 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 coordinator**

The beneficiaries may terminate the Agreement.

The coordinator 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 coordinator 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 participation of one or more beneficiaries by the coordinator**

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The participation of one or more beneficiaries may be terminated by the coordinator, on request of the beneficiary concerned or on behalf of the other beneficiaries.

The coordinator must send a *formal notification* of termination to EUSPA and inform the beneficiary concerned by termination.

If the coordinator's participation is terminated without its agreement, the *formal notification* must be submitted by another beneficiary (acting on behalf of the other beneficiaries).

The *formal notification* must include:

- (a) the reasons for termination;
- (b) the opinion of the beneficiary concerned by termination (or proof that this opinion has been requested in writing);
- (c) the date on which the termination takes effect. This date must be set after the *formal notification*, and
- (d) a request for amendment in accordance with Article II.17.4.2(a).

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

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

## **II.17.3 Termination of the Agreement or the participation of one or more beneficiaries by EUSPA**

### **II.17.3.1 Grounds for termination**

EUSPA may terminate the Agreement or the participation of any one or several beneficiaries, 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) following the termination of the participation of any one or several beneficiaries, the necessary modifications to the Agreement would call into question the decision awarding the grant or would result in unequal treatment of applicants;
- (c) the beneficiaries do not implement the *action* as specified in Annex I or if a beneficiary fails to comply with another substantial obligation incumbent on it under the Agreement;
- (d) 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 breach the principle of equal treatment of applicants;

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- (e) a beneficiary or any natural or legal person that assumes unlimited liability for the debts of that beneficiary is subject to any of the situations provided for in points (a) or (b) of Article 136 (1) of the Financial Regulation<sup>7</sup>;
- (f) a 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;
- (g) EUSPA has evidence that a beneficiary or any *related person* have committed *substantial errors, irregularities or fraud* in the award procedure or in the implementation of the Agreement, including in case of submission of false information or failure to provide required information;
- (h) EUSPA has evidence that a beneficiary has committed, in other European Union or Euratom grants awarded to it under similar conditions, systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations that have a material impact on this grant, or
- (i) EUSPA has sent a beneficiary, through the coordinator, 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 that beneficiary has failed to request an amendment ending the participation of the entity and reallocating its tasks.

### **II.17.3.2 Procedure for termination**

**Step 1-** Before terminating the Agreement or participation of one or more beneficiaries, EUSPA must send a *formal notification* to the coordinator:

- (a) informing it of:
  - (i) its intention to terminate;
  - (ii) the reasons for termination; and
- (b) inviting it, within 45 (forty-five) calendar days of receiving the formal notification:
  - (i) to submit observations on behalf of all beneficiaries and,
  - (ii) in case of point (c) of Article II.17.3.1, to inform EUSPA of the measures to ensure compliance with the obligations under the Agreement.

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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

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**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 coordinator informing it of the termination and the date on which it takes effect. The coordinator must immediately inform the other beneficiaries of the termination.

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

The termination takes effect:

- (a) for terminations under points (a), (b), (c) and (e) of Article II.17.3.1: on the day specified in the *formal notification* of termination referred to in the second sub-paragraph (Step 2);
- (b) for terminations under points (d), (f), (g), (h) and (i) of Article II.17.3.1: on the day after the *formal notification* of termination referred to in the second sub-paragraph (Step 2) is received by the coordinator.

## II.17.4 Effects of termination

### II.17.4.1 For termination of the Agreement:

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

If EUSPA does not receive the request for payment of the balance within 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 for breach of the obligation to submit the request for payment, the coordinator 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 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 coordinator within the meaning of Article II.17.1; or
- (b) termination of the Agreement by EUSPA on the grounds set out in points (c), (f), (g), (h) and (i) of Article II.17.3.1.

Neither party may claim damages due to termination of the Agreement by the other party.

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After termination, the beneficiaries' 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.

**II.17.4.2 For termination of the participation of one or more beneficiaries:**

**a)** The coordinator must submit a request for amendment including:

- (i) a proposal for reallocation of the tasks of the beneficiary or beneficiaries concerned by termination and,
- (ii) if necessary, the addition of one or more new beneficiaries to succeed the beneficiary or beneficiaries concerned in all their rights and obligations under the Agreement.

If EUSPA terminates the participation of a beneficiary, the coordinator must submit the request for amendment within 60 (sixty) calendar days from the day on which the termination takes effect.

If the coordinator terminates the participation of a beneficiary, the request for amendment must be included in the formal notification of termination referred to in Article II.17.2.

If termination takes effect after the end of the *implementation period*, no request for amendment must be included, unless the beneficiary concerned is the coordinator. In this case, the request for amendment must propose a new coordinator.

If the request for amendment is rejected by EUSPA, the Agreement may be terminated according to Article II.17.3.1 (b). The request for amendment may be rejected if it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants

**b)** The beneficiary concerned by termination must submit to the coordinator:

- (i) a technical report and
- (ii) a financial statement covering the period from the end of the last reporting period to the date when termination takes effect.

This information must be included by the coordinator in the payment request for the next reporting period.

Only costs incurred by the beneficiary concerned until termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination 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 participation of a beneficiary by the coordinator within the meaning of Article II.17.2 or
- (b) termination of the participation of a beneficiary by EUSPA on the grounds set out in points (c), (f), (g), (h) or (i) of Article II.17.3.1.

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Neither party may claim damages on the grounds that the other party terminated the participation of a beneficiary.

After termination, the concerned beneficiary's obligations, 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, continue to apply.

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

**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 a 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 recoveries 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.

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**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 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 of the *action*. 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 being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary;
- (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 cost* of the *action* must comply with the conditions of eligibility set out in Article II.19.1.

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

- (a) the costs 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;

The costs of natural persons working under a contract with the beneficiary other than an employment contract or seconded to the beneficiary by a third party against payment may be assimilated to such costs of personnel, provided that the following conditions are fulfilled:

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- (i) the natural person works under the instructions of the beneficiary and, unless otherwise agreed with the beneficiary, in the premises of the beneficiary;
  - (ii) the result of the work belongs to the beneficiary; and
  - (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the beneficiary;
- (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 accounting statements of the beneficiary, provided that the asset:
  - (i) is written off in accordance with the international accounting standards and the usual accounting practices of the beneficiary and
  - (ii) has been purchased in accordance with Article II.10.1 if the purchase occurred within the *implementation period*;

The costs of rental or lease of 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. By way of exception, the Special Conditions may provide for the eligibility of the full cost of purchase of equipment, where 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;

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- (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.

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

### 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 a 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 a beneficiary;
- (h) costs declared by the beneficiary in the framework of another action receiving a grant financed from the European Union budget (including grants awarded by a Member State and financed from the European Union budget and grants awarded by other bodies than the Commission 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 a beneficiary which already receives 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

Each beneficiary must declare as eligible costs or 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;

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- (c) for lump sum costs or lump sum contributions: the global amount specified in Article I.3.2(iii), 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 its 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 its usual cost accounting practices.

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

Each 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 as well as 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, notably 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, notably accounting statements, to prove the amount declared as 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, notably accounting statements, for the flat rate applied;

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- (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 for compliance of the costs 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 in accordance with Article I.3.2.

**II.20.3.2** If the Special Conditions provide so, the beneficiary may submit to the Commission/EUSPA a request for assessment of 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, in case of public bodies, by a competent and independent public officer and
- (b) drawn up in accordance with Annex VIII.

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 which may be laid down in the Special Conditions.

**II.20.3.3** Where the Commission /EUSPA has confirmed that the usual cost accounting practices of the beneficiary 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 the Commission/ EUSPA and
- (b) the beneficiary did not conceal any information for the purpose of their approval.

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

**THE BENEFICIARIES**

Where the Special Conditions contain a provision on entities affiliated to the beneficiaries, 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 the entity is affiliated to ensures that the conditions applicable to the beneficiary 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**

Beneficiaries are allowed to adjust the estimated budget set out in Annex III by transfers between themselves and 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 in accordance with Article II.13.

However, the beneficiaries 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).

As an exception to the first subparagraph, if beneficiaries want to change the value of the contribution to which each of them is entitled, as referred to in point (c) of the third subparagraph of II.26.3, the coordinator must request an amendment in accordance with Article II.13.

The first three subparagraphs do not apply to amounts which, in accordance with Article I.3.2(iii), take the form of lump sums.

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

EUSPA may terminate the Agreement in accordance with Article II.17.3.1(c) and may reduce the grant in accordance with Article II.25.4 if the coordinator:

- (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 (sixty) calendar days following the end of the corresponding reporting period, and
- (b) still fails to submit such a request within 60 (sixty) calendar days following a written reminder sent by EUSPA.

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

**II.24.1 Suspension of payments**

**II.24.1.1 Grounds for suspension**

EUSPA may at any moment suspend, in whole or in part, the pre-financing payment and interim payments for one or more beneficiaries or the payment of the balance for all beneficiaries:

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

- (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 (thirty) 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 coordinator 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 coordinator must immediately inform the other beneficiaries of the suspension. The suspension takes effect on the day EUSPA sends *formal notification* of suspension (Step 2).

Otherwise, EUSPA must send a *formal notification* to the coordinator 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 coordinator is not entitled to submit:

- (a) any requests for payments and supporting documents referred to in Articles I.4.2 and I.4.3 or,

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(b) where the suspension concerns the pre-financing payments or interim payments for one or several beneficiaries only, any requests for payments and supporting documents relating to the participation of the concerned beneficiary or beneficiaries in the *action*.

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 coordinator to suspend the implementation of the *action* in accordance with Article II.16.1 or to terminate the Agreement or the participation of a beneficiary in accordance with Article II.17.1 and Article II.17.2.

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

In order for EUSPA to resume payments, the beneficiaries 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 coordinator 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 provisions of the Agreement, or
- (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 coordinator 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 coordinator may request EUSPA if the suspension will continue.

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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 or the participation of the beneficiary as provided for in Article II.17.3.1(c) 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 actual extent to which the *action* is implemented in accordance with the Agreement.

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

- Step 1 – Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate of 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, in accordance with 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, beneficiaries and affiliated entities;
- (b) If, in accordance with Article I.3.2(ii) to (v), the grant takes the form of the reimbursement of eligible 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 beneficiaries and affiliated entities;

If Article I.3.2 provides for a combination of different forms of grant, the amounts obtained must be added.

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

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

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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 beneficiaries, 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 coordinator.

The following are considered receipts:

- (a) income generated by the *action*;
- (b) financial contributions given by third parties to a 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 however 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) (as compared to 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. 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 improper implementation of the *action* or to the seriousness of the breach.

Before reduction of the grant, EUSPA must send a *formal notification* to the coordinator:

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(a) informing it of:

- (i) its intention to reduce the *maximum amount of the grant*,
- (ii) the amount it intends to reduce
- (iii) the reasons for reduction; and

(b) inviting it to submit observations within 30 (thirty) 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 coordinator 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 at the time of payment of the balance

Where the payment of the balance takes the form of a recovery, the coordinator must repay EUSPA the amount in question, even if it has not been the final recipient of the amount due.

### II.26.2 Recovery after payment of the balance

Where an amount is to be recovered as provided for in Articles II.27.6, II.27.7 and II.27.8, the beneficiary concerned by the audit or OLAF findings must repay EUSPA the amount in question. Where the audit findings do not concern a specific beneficiary (or its affiliated entities), the coordinator must repay EUSPA the amount in question, even if it was not the final recipient of the amount due.

Each 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.26.3 Recovery procedure

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

- (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.

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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 through a *formal notification* to the beneficiary 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 concerned by EUSPA (‘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 holding the beneficiaries jointly and severally liable up to the maximum EU contribution indicated, for each beneficiary, in the estimated budget (Annex III as last amended);
- (d) by taking legal action in accordance with Article II.18.2 or with the Special Conditions or by adopting an enforceable decision in accordance with Article II.18.3.

**II.26.4 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.5.5 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.26.5 Bank charges**

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

**ARTICLE II.27 – CHECKS, AUDITS AND EVALUATION**

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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

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**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 in relation to the proper implementation of the *action* and compliance with the obligations under the Agreement. It may also check the statutory records of the beneficiaries for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

Information and documents provided in the framework of checks or audits must be treated on a confidential basis.

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

Checks, audits or evaluations made by the European Commission/EUSPA may be carried out either directly by its 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.

Such checks, audits or evaluations may be initiated during the implementation of the Agreement and for 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 concerned must inform the affiliated entity.

**II.27.2 Duty to keep documents**

The beneficiaries must 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, for 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 periods set out in the first and second subparagraphs are longer if there are on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case referred to in Article

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II.27.7. In such cases, the beneficiaries must keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

### II.27.3 Obligation to provide information

Where a check, audit or evaluation is initiated before the payment of the balance, the coordinator must provide any information, including information in electronic format, requested by the European Commission/EUSPA or by any other outside body authorised by it. Where appropriate, the European Commission/EUSPA may request such information to be provided directly by a beneficiary.

Where a check or audit is initiated after payment of the balance, such information must be provided by the beneficiary concerned.

In case the beneficiary concerned does not comply with the obligations set out in the first and second subparagraphs, the European Commission/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 beneficiaries must allow European Commission/EUSPA staff and outside personnel authorised by the European Commission/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.

They 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.

In case the beneficiary concerned refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, the Commission/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 the European Commission/EUSPA or its authorised representative to the beneficiary concerned, 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 concerned within 60 (sixty) calendar days of expiry of the time limit for submission of observations.

### II.27.6 Effects of audit findings

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On the basis of the final audit findings, the European Commission/EUSPA may take the measures which it considers necessary, including recovery at the time of payment of the balance or after payment of the balance of all or part of the payments made by it, in accordance with Article II.26.

In the case of final audit findings made 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 beneficiaries 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** The European Commission/EUSPA may extend audit findings from other grants to this grant if:

- (a) the beneficiary concerned is found, in other EU or Euratom grants awarded under similar conditions, to have committed systemic or recurrent errors, *irregularities, fraud* or breach of obligations that have a material impact on this grant and
- (b) the final audit findings are sent to the beneficiary concerned 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 in accordance with Article II.25.4,
- (c) recovery of undue amounts in accordance with Article II.26,
- (d) suspension of payments in accordance with Article II.24.1
- (e) suspension of the *action* implementation in accordance with Article II.16.2,
- (f) termination in accordance with Article II.17.3.

**II.27.7.2** The European Commission/EUSPA must send a *formal notification* to the beneficiary concerned 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 the European Commission 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 concerned:

- considers that the submission of revised financial statements is not possible or practicable or

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- will not submit revised financial statements.

**Step 2** - The beneficiary concerned has 60 (sixty) calendar days from receiving 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 the European Commission/EUSPA in justified cases.

**Step 3** – If the beneficiary concerned submits revised financial statements taking account of the findings the European Commission/EUSPA will define the amount to be corrected on the basis of those revised statements.

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

- (i) the acceptability of the alternative method and
- (ii) the revised eligible costs determined by applying this method.

Otherwise the European Commission/EUSPA must send a *formal notification* to the beneficiary concerned informing it of:

- (i) the non-acceptability of the observations or the alternative method proposed and
- (ii) 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 beneficiaries 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 submit observations on the list of grants affected by the findings and
- (ii) the correction flat-rate the European Commission/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 concerned has 60 (sixty) calendar days from receiving the *formal notification* to submit observations or to propose a duly substantiated alternative flat-rate.

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**Step 3** - If the European Commission/EUSPA accepts the alternative flat rate proposed by the beneficiary, it must send a *formal notification* to the beneficiary concerned informing it of:

- (i) the acceptability of the alternative flat-rate and
- (ii) the corrected grant amount by applying this flat rate.

Otherwise the European Commission/EUSPA must send a *formal notification* to the beneficiary concerned informing it of:

- (i) the non-acceptability of the observations or the alternative flat rate proposed and
- (ii) 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 beneficiaries 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 the European Commission/EUSPA, notably right of access, for the purpose of checks and investigations.

By virtue of Council Regulation No 2185/96<sup>9</sup> and Regulation 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 recovery by the European Commission/EUSPA.

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

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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),

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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, notably right of access, for the purpose of checks and audits.

Party Initial	EUSPA Initial

## ANNEX IV - MANDATE

I, the undersigned,

[forename and surname of the legal representative of the future beneficiary signing this mandate],

representing,

[full official name of the future beneficiary] [ACRONYM]

[official legal status or form]<sup>11</sup>

[official registration No]<sup>12</sup>

[full official address]

[VAT number],

(‘the beneficiary’),

for the purposes of signature and implementation of the grant agreement [Title & No] with EUSPA (‘the grant agreement’) for the action entitled [insert title of the action] (‘the action’)

hereby:

### 1. Mandate

[full official name of the coordinator] [ACRONYM]

[official legal status or form]

[official registration No]<sup>13</sup>

[full official address]

[VAT number],

represented by [forename, surname and function of the legal representative of the coordinator] (‘the coordinator’)

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<sup>11</sup> To be deleted or filled in according to the "Legal Entity" form

<sup>12</sup> To be deleted or filled in according to the "Legal Entity" form

<sup>13</sup> To be deleted or filled in according to the "Legal Entity" form

Party Initial	EUSPA Initial

to sign in my name and on my behalf the grant agreement and its possible subsequent amendments with EUSPA.

2. Mandate the coordinator to act on behalf of the beneficiary in compliance with the grant agreement.

I hereby confirm that the beneficiary accepts all terms and conditions of the grant agreement and, in particular, all provisions affecting the coordinator and the other beneficiaries. In particular, I acknowledge that, by virtue of this mandate, the coordinator alone is entitled to receive funds from EUSPA and distribute the amounts corresponding to the beneficiary's participation in the action.

I hereby accept that the beneficiary will do everything in its power to help the coordinator fulfil its obligations under the grant agreement, and in particular, to provide to the coordinator, on its request, whatever documents or information may be required.

I hereby declare that the beneficiary agrees that the provisions of the grant agreement, including this mandate, take precedence over any other agreement between the beneficiary and the coordinator which may have an effect on the implementation of the grant agreement.

This mandate is annexed to the grant agreement and forms an integral part of it.

SIGNATURE

[forename, surname, function of the legal representative of the mandating beneficiary]

[signature]

Done at [place], [date]

In duplicate in English.

Party Initial	EUSPA Initial

**ANNEX IX - PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS**

**NAME OF APPLICANT CONSORTIUM:**

Name of Coordinator

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

Name of co-beneficiary

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

Party Initial	EUSPA Initial