

GRANT AGREEMENT FOR AN ACTION WITH ONE BENEFICIARY
AGREEMENT NUMBER – EUSPA/GRANT/01/2025

After Corrigendum 3

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

on the one part,

The **European Union Agency for the Space Programme** (hereinafter referred to as “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]¹

[official registration No.]²

[official full address]

[VAT number]

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

The parties referred to above

HAVE AGREED

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

Annex I	Description of the <i>action (to be provided by the beneficiary)</i> including as resulting from clarifications
Annex II	General Conditions (hereinafter referred to as “the General Conditions”)
Annex III	Estimated budget of the <i>action</i> and model ‘Financial statement’
Annex IV	List of pre-existing intellectual property rights
Annex V	Call for Proposals EUSPA/GRANT/01/2025
Annex VI	Free of charge right of use Agreement

which form an integral part of the Agreement.

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

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

¹ To be deleted or filled in according to the “Legal Entity” form

² To be deleted or filled in according to the “Legal Entity” form

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

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SPECIAL CONDITIONS

ARTICLE 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 of the action in bold]** as described in Annex I.

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

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

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

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”).

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 a lump sum contribution (*‘lump sum contribution’*) to cover all eligible costs of the action.

I.3.3. Estimated budget

The estimated budget of the action (lump sum breakdown) is set out in the tab “Budget_Lump Sum Breakdown” in Annex III.

It contains the estimated eligible contribution for the action (lump sum contributions), broken down by work package. The other tabs included in Annex III shall be used for the sole purposes of assessing and accepting Amendments (see Article II.12), calculation of the final amount of the grant (see Article II.21) and submission of the ‘Financial statement’ at the end of the project.

I.3.4. Budget flexibility

Changes to the estimated budget (the tab “Budget_Lump Sum Breakdown” in Annex III.) always require an amendment (see Article II.12). Amendments for transfers between work packages are possible only if:

- the work packages concerned are not already completed and
- the transfers are justified by the technical implementation of the action.

ARTICLE I.4 – ELIGIBLE AND INELIGIBLE CONTRIBUTIONS

I.4.1 General and specific eligibility conditions

Lump sum contributions are eligible (*‘eligible contributions’*), if:

- a) they are set out in the tab “Budget_Lump Sum Breakdown” in Annex III and
- b) the work packages are completed and the work is properly implemented by the beneficiary and/or the results are achieved and deliverables are submitted and accepted by EUSPA, in accordance with Annex I and during the period set out in Article I.2.2 (with the exception of work relating to the submission of the final periodic report, which may be achieved afterwards)

They will be calculated on the basis of the amounts set out in the tab “Budget_Lump Sum Breakdown” in Annex III.

I.4.2 Ineligible contributions

‘Ineligible contributions’ are:

- a) lump sum contributions that do not comply with the conditions set out above (see Article I.4.1)
- b) lump sum contributions for activities already funded under other EU grants (or grants awarded by an EU Member State, non-EU country or other body implementing the EU budget),

If a beneficiary declares lump sum contributions that are ineligible, they will be rejected (see Article II.24)

ARTICLE I.5 – REPORTING, REQUESTS FOR PAYMENTS AND SUPPORTING DOCUMENTS

I.5.1 Reporting periods

The *action* has one (1) reporting period from the *starting date* of the project to the end of the project as set out in Article I.2.2.

I.5.2 Request for payment of the balance and supporting documents

The beneficiary must submit a request for payment of the balance within 60 (sixty) calendar days following the end of the project, as specified in Article I.2.2.

This request shall include the following documents:

- (a) ‘technical report’ which shall include an overview of the action implementation, containing at least the following:
 - (i) the information needed³ to justify the contribution requested on the basis of lump sums;
 - (ii) description of the work packages implemented from the beginning of the project to the end of the project and main results achieved, per task;
 - (iii) the list of deliverables submitted;
 - (iv) overview of reviews presented (if applicable);
 - (v) justification for the deviations from the *Description of the action* (if applicable) concerning tasks (e.g. delays in the implementation).
- (b) ‘financial statement’ which shall include a consolidated statement with the breakdown of the amounts claimed by the beneficiary and its affiliated entities per work package.

The financial statement must contain the lump sum contributions indicated in the tab “Budget_Lump Sum Breakdown” in Annex III, for the work packages that were completed during the project.

The beneficiary may also declare partial lump sum contributions for work packages that were not fully completed (e.g. due to force majeure or technical impossibility).

³ The information provided shall address specifically the milestones and where applicable the corresponding means of verification as set out in Annex I.

Lump sum contributions which are not declared in a financial statement will not be taken into account by EUSPA.

By signing the financial statement, the beneficiary confirms that:

- the information provided is complete, reliable and true
- the lump sum contributions declared are eligible (in particular, the work packages have been completed, the work has been properly implemented and/or the results were achieved and the deliverables have been submitted and approved by EUSPA in accordance with Annex I; see Article I.4)
- the proper implementation and/or achievement can be substantiated by the relevant submitted deliverables as indicated in Annex I and may be further substantiated by adequate records and supporting documents (see Article II.23.2) that will be produced upon request (see Article II.2.e) or in the context of checks, reviews and audits (see Article II.23).

In case of recoveries (see Article II.22), beneficiary will be held responsible also for the lump sum contributions declared for its affiliated entities (if any).

I.5.3 Currency for financial statement

The financial statement shall be drafted in euros.

I.5.4 Language of requests for payments, technical reports and financial statements

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

ARTICLE I.6 — PAYMENTS AND PAYMENT ARRANGEMENTS

I.6.1 Payments to be made

EUSPA must make the following payments to the beneficiary:

- one pre-financing payment of an amount equal to 70% of the amount of the grant set in Article I.3.1;
- one payment of the balance on the basis of the request for payment of the balance referred to in Article I.5.2.

I.6.2 Pre-financing payment

The aim of the pre-financing is to provide the beneficiary with a float. The pre-financing remains a credit for the Agency until it is cleared during the payment of the balance.

Acceptance of the individual work packages or deliverables during the project implementation does not entitle the beneficiary to the clearing of the pre-financing. Clearing of the pre-financing is done only at the payment of the balance (see Article I.6.3).

Prefinancing payments (or parts of them) may be offset (without the beneficiary' consent) against amounts owed by a beneficiary to the granting authority — up to the amount due to that beneficiary. EUSPA shall make the pre-financing payment of EUR [insert amount] to the beneficiary within 30 (thirty) calendar days from the entry into force of the Agreement, or 10 (ten) days before *starting date*, whichever is the latest, except if Article II.20.1 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. Should EUSPA exercise this right, it shall inform the beneficiary in due time. The financial guarantee shall fulfil the following conditions:

- (a) it is provided by a bank or an approved financial institution or, if requested by the beneficiary and accepted by EUSPA, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require EUSPA to first have recourse against the principal debtor (i.e. the beneficiary concerned); and
- (c) it explicitly remains in force until the pre-financing is cleared against 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 paid by a beneficiary. EUSPA must release the guarantee within the following month.

I.6.3 Payment of the balance

The final payment (payment of the balance) reimburses the eligible lump sum contributions claimed for the work packages and related deliverables implemented during the project.

Payment is subject to the approval of the request for payment of the balance and of the accompanying documents as specified in Article I.5.2 and the work packages declared and deliverables submitted and accepted by EUSPA. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

Acceptance of individual deliverables/work packages by EUSPA during the project implementation does not entitle the beneficiary for the payment, nor for the clearing of the pre-financing amount already received. Any clearing of the pre-financing or payment of the balance will be done at the end of the project.

Work packages (or parts of them) that have not been delivered or cannot be approved by EUSPA will be rejected (see Article II.24).

EUSPA determines the amount due as the balance by deducting the total amount of pre-financing already made (if any) from the final amount of the grant determined in accordance with Article II.21.

If the total amount of the pre-financing is greater than the final amount of the grant determined in accordance with Article II.21, the payment of the balance takes the form of a recovery as provided for by Article II.22.

If the total amount of the pre-financing is lower than the final amount of the grant determined in accordance with Article II.21, EUSPA must pay the balance within 90 (ninety) calendar days from when it receives the documents referred to in Article I.5.2, except if Article II.20.1 or II.20.2 apply.

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 contribution indicated for the beneficiary, in the estimated budget in the tab "Budget_Lump Sum Breakdown" in Annex III.

EUSPA will inform the beneficiary of the offsetting of the prefinancing in due time.

The payment of the balance must clear 100% of the amount of the pre-financing payment previously made.

I.6.4 Notification of amounts due

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

- (a) informing it of the amount due;
- (b) specifying that the notification concerns the payment of the balance; and
- (c) specifying the final amount of the grant determined in accordance with Article II.21.

I.6.5 Interest on late payment

If EUSPA does not pay within the time limits for payment, the beneficiary is entitled to late-payment interest at the rate applied by the European Central Bank for its main refinancing operations in Euro (“the reference rate”), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

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

If EUSPA suspends the time limit for payment as provided for in Article II.20.2 or if it suspends an actual payment as provided for in Article II.20.1, these actions may not be considered as cases of late payment.

Late-payment interest covers the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article I.6.7. EUSPA does not consider payable interest when determining the final amount of grant within the meaning of Article II.21.

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

I.6.6 Currency for payments

EUSPA must make payments in Euro.

I.6.7 Date of payment

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

I.6.8 Costs of payment transfers

Costs of the payment transfers are borne as follows:

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

I.6.9 Payments to the beneficiary

EUSPA must make payments to the beneficiary.

Payments to the beneficiary discharge EUSPA from its payment obligation.

ARTICLE I.7 — BANK ACCOUNT FOR PAYMENTS

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

Name of bank: ...
Precise denomination of the account holder: ...
Full account number (including bank codes): ...
IBAN code: ...⁴

ARTICLE I.8 — DATA CONTROLLER, COMMUNICATION DETAILS OF THE PARTIES

I.8.1 Data controller

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

I.8.2 Communication details of EUSPA

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

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

I.8.3 Communication details of the beneficiary

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

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

ARTICLE I.9 — ENTITIES AFFILIATED TO THE BENEFICIARY

[Option if Affiliated entities not involved: Not applicable.]

[Option if Affiliated entities involved:

⁴ BIC or SWIFT code applies for countries where the IBAN code does not apply.

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]

Affiliated entities can charge lump sum contributions to the action under the same conditions as the beneficiary and must implement the action tasks attributed to them in Annex I.

Their contributions will be included in the tab “Budget_Lump Sum Breakdown” in Annex III and will be taken into account for the calculation of the grant.

ARTICLE I.10 – ADDITIONAL PROVISIONS ON USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)

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

- (a) to promote and create awareness of the achieved project results:
 - i. To prepare and disseminate promotional material in hard copies, in electronic or digital format (e.g. leaflets, presentations, etc.).
 - ii. To advertise through press information services, in hard copies, in electronic or digital format.
 - iii. To reproduce the demonstration and/or presentations after the completion of the project at EUSPA or other institutional premises
- (b) to showcase and demonstrate the components’ and algorithms’ capabilities and applications for institutional purposes.
- (c) to edit or re-write in another way the textual deliverables of the action, including shortening, summarising and correcting technical errors in the content;
- (d) to run a simplified demonstration showcasing the project’s achievements and in particular the actual Galileo contribution;
- (e) to license or sub-license to third parties for the same purposes above mentioned.

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

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

ARTICLE I.11 — FINANCIAL SUPPORT TO THIRD PARTIES

By derogation from Article II.11 of this Agreement, the financial support to third parties is not applicable under the Agreement.

SIGNATURES

For the beneficiary

For EUSPA



[function/forename/surname]

Rodrigo da Costa, Executive Director

[signature]

[signature]

Done in [place], [date]

Done in Prague, [date]

In duplicate in English.

ANNEX II — GENERAL CONDITIONS

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ARTICLE II.1 - DEFINITIONS

The following definitions apply for the purpose of the Agreement:

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

'Affiliated entities': Entities affiliated with a beneficiary within the meaning of Article 190 of EU Financial Regulation 2024/2509, which participate in the action with similar rights and obligations as the beneficiaries (obligation to implement action tasks and right to charge costs and claim contributions).

'Breach of obligations': failure by a beneficiary to fulfil one or more of its contractual obligations.

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

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

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

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

'Fraud': any act or omission relating to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget, the non-disclosure of information in violation of a specific obligation, with the same effect or the misapplication of such funds or assets for purposes other than those for which they were originally granted. This includes fraud within the meaning of Article 3 of EU Directive 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995, as well as any other wrongful or criminal deception intended to result in financial or personal gain.

'Grant': The grant awarded in the context of this Agreement.

'Grave professional misconduct': a violation of applicable laws or regulations or ethical standards of the profession to which a person or entity belongs, or any wrongful conduct of a person or entity

which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including grave professional misconduct within the meaning of Article 138(1)(c) of EU Financial Regulation 2024/2509.

‘Implementation period’: the period of implementation of the activities forming part of the action, as specified in Article I.2.2;

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

‘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 Union law resulting from an act or omission by a beneficiary, which has or would have the effect of prejudicing the Union’s budget. This also includes irregularities within the meaning of Article 1(2) of EU Regulation 2988/95.

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

‘Participants’: Entities participating in the action as beneficiary, affiliated entities, subcontractors, or recipients of financial support to third parties.

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

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

‘Related person’: any natural or legal person who is a member of the administrative, management or supervisory body of the beneficiary or who has powers of representation, decision or control with regard to the beneficiary;

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

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

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

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

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

ARTICLE II.2 – GENERAL OBLIGATIONS OF THE BENEFICIARY

The beneficiary:

- (a) is liable for carrying out the *action* in accordance with the Agreement and the call conditions;
- (b) must comply with any legal obligations it is bound by under applicable EU, international and national law;
- (c) must inform EUSPA immediately of any events or circumstances of which the beneficiary is aware, that are likely to affect or delay the implementation of the *action*;
- (d) must inform EUSPA immediately:
 - (i) of any change in its legal, financial, technical, organisational or ownership situation and of any change in its name, address or legal representative;
 - (ii) of any change in the legal, financial, technical, organisational or ownership situation of its affiliated entities and of any change in their name, address or legal representative.
 - (iii) of any change regarding the exclusion situations listed in Article 138 of Regulation (EU) 2024/2509, including for its affiliated entities;
- (e) must provide – during the implementation of the action or afterwards – any information requested in order to verify eligibility of the lump sum contributions declared, proper implementation of the action and compliance with the other obligations under the Agreement.

If the beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article II.21.2).

ARTICLE II.3 – COMMUNICATION BETWEEN PARTIES

II.3.1 Form and means of communication

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

- (a) be made in writing (in paper or electronic form);
- (b) bear the number of the Agreement; and
- (c) be made using the communication details identified in Article I.8.

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

II.3.2 Date of communications

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

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

Mail sent to EUSPA using the postal or courier services is considered to have been received by EUSPA on the date on which it is registered by the department identified in Article I.8.2.

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

ARTICLE II.4 – LIABILITY FOR DAMAGES

II.4.1 EUSPA may not be held liable for any damage caused or sustained by the beneficiary, including any damage caused to third parties as a consequence of or during the implementation of the *action*.

II.4.2 Except in cases of *force majeure*, the beneficiary must compensate EUSPA for any damage it sustains as a result of the implementation of the *action* or because the *action* was not implemented in full compliance with the Agreement.

ARTICLE II.5 – CONFLICT OF INTEREST

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

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

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

ARTICLE II.6 - CONFIDENTIALITY

II.6.1 During implementation of the *action* and for five years after the payment of the balance, the parties must treat with confidentiality any *confidential information and documents*.

II.6.2 The parties may only use *confidential information and documents* for a reason other than to fulfil their obligations under the Agreement if they have first obtained the prior written agreement of the other party.

II.6.3 The confidentiality obligations do not apply if:

- (a) the disclosing party agrees to release the other party from those obligations;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligations;
- (c) EUSPA discloses the confidential information to third entity authorized by EUSPA in order to carry out technical and financial checks, audits and evaluation in relation to the proper implementation of the action and compliance with the obligations under the Agreement;
- (d) the disclosure of the *confidential information or documents* is required by law.

ARTICLE II.7 – PROCESSING OF PERSONAL DATA

II.7.1 Any personal data included in the Agreement must be processed in accordance with the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data⁵. Such data shall be processed by the data controller (EUSPA) and the data processor (the beneficiary) solely for the purposes of the performance, management and monitoring of the Agreement without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

II.7.2 The following categories of personal data are expected to be processed by the data controller: contact details of the beneficiary's personnel or its contractors that may be included in deliverables, such as name and last name, gender, telephone number, email address, postal address, organisation and position within organisation. The provision of the aforementioned data is a contractual requirement.

II.7.3 The recipients of the personal data mentioned under Article II.7.2 shall be (1) a limited number of staff of EUSPA managing the Agreement, (2) a limited number of staff of EUSPA contractors assisting EUSPA staff in the management of the Agreement, (3) a limited number of staff of EUSPA contractors providing hosting services for EUSPA servers. The personal data will be stored in the premises of the aforementioned recipients, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present Agreement for audit and discharge purposes.

II.7.4 The beneficiary shall have the right to request from the data controller access to, rectification or erasure of its personal data, restriction of processing, the right to object to the processing and the right to data portability, provided that there are grounds for the exercise of any of these rights, as per the applicable rules.

II.7.5 The beneficiary shall have right of recourse at any time to the European Data Protection Supervisor.

⁵ Currently Regulation (EU) 2018/1725.

- II.7.6** If, throughout the duration of the Agreement, the beneficiary is required to process any personal data (acting as data processor), the beneficiary shall:
- i. inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
 - ii. with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the data controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - iii. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - iv. without prejudice to Article II.7.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
 - v. not engage another processor or sub-processor without prior specific written authorisation of the controller;
 - vi. taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
 - vii. assist the controller for the fulfilment of its obligations to
 - a. ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users
 - b. notify a personal data breach to the European Data Protection Supervisor
 - c. communicate a personal data breach without undue delay to the data subject, where applicable
 - d. carry out data protection impact assessments and prior consultations as necessary
 - viii. notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:
 - a. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - b. likely consequences of the breach;
 - c. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
 - ix. maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties;
 - x. delete all the personal data after the end of the provision of services relating to processing;
 - xi. make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller

- II.7.7** The beneficiary shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the Agreement.
- II.7.8** The beneficiary shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:
- (a) the pseudonymisation and encryption of personal data;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
 - (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

ARTICLE II.8 – VISIBILITY OF UNION FUNDING

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

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

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

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

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

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

II.8.2 Disclaimers excluding EUSPA responsibility

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

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

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

II.9.1 Ownership of the results by the beneficiary

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

II.9.2 Pre-existing rights

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

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

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

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

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

- (a) for its own purposes and in particular to make available to persons working for EUSPA, European Commission, other European Union institutions, agencies and bodies and to Member States' institutions, as well as to copy and reproduce in whole or in part and in an unlimited number of copies;
- (b) reproduction: the right to authorise direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including making the results available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes communication and broadcasting by cable or by satellite;
- (d) distribution: the right to authorise any form of distribution of results or copies of the results to the public;
- (e) adaptation: the right to modify the results;
- (f) translation;
- (g) the right to store and archive the results in line with the document management rules applicable to the European Commission and EUSPA, including digitisation or converting the format for preservation or new use purposes;

- (h) where the results are documents, the right to authorise the reuse of the documents in conformity with Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents to the extent that it is applicable and the documents fall within its scope and are not excluded by any of its provisions. For the sake of this provision, the terms 'reuse' and 'document' have the meanings given to them by Decision 2011/833/EU.

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

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

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

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

ARTICLE II.10 – SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION

Subcontractors may participate in the action, if necessary for the implementation.

The beneficiary's costs for subcontracting are considered entirely covered by the lump sum contributions for implementing the work packages (irrespective of the actual subcontracting costs incurred, if any).

The beneficiary must ensure that its contractual obligations under Articles II.2.a (proper implementation), II.5 (Conflict of interest), II.6 (Confidentiality), II.8 (Visibility of European Union funding), II.9 (Pre-existing rights and use of the results), II.2.(e) (Obligation to provide information) and II.23.2 (Duty to keep records) also apply to the subcontractors.

The beneficiaries must ensure that the bodies mentioned in Article II.23 (e.g. EUSPA, OLAF, Court of Auditors (ECA)) can exercise their rights also towards the subcontractors.

ARTICLE II.11 – FINANCIAL SUPPORT TO THIRD PARTIES

Not applicable.

ARTICLE II.12 – AMENDMENTS TO THE AGREEMENTS

II.12.1 Any amendment to the Agreement must be made in writing.

II.12.2 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.12.3 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.12.4 In case of an operating grant the period set out in Article I.2.2 shall not be extended via amendments.

II.12.5 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.13 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES

II.13.1 The beneficiary may not assign any of its claims for payment against EUSPA to any third party, except if approved by EUSPA on the basis of a reasoned, written request by the beneficiary.

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

II.13.2 In no circumstances may an assignment release the beneficiary from its obligations towards EUSPA.

ARTICLE II.14 – FORCE MAJEURE

II.14.1 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.14.2 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.14.3 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.15 – SUSPENSION OF THE IMPLEMENTATION OF THE ACTION

II.15.1 Suspension of implementation by the beneficiary

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

The beneficiary must immediately inform EUSPA, stating:

- (a) the reasons for suspension,;
- (b) the date the suspension takes effect – this date may be before the date of notification
- (c) the expected date of resumption.

Once the circumstances allow the beneficiary to resume implementing the *action*, the beneficiary must inform EUSPA immediately and present a request for amendment of the Agreement as provided for in Article II.12.3. This obligation does not apply if the Agreement is terminated in accordance with Articles II.16.1, or points (b) or (c) of Article II.16.2.1.

During the suspension of implementation, no work may be done. Ongoing work packages must be interrupted, and no new work packages may be started.

II.15.2 Suspension of implementation by EUSPA

II.15.2.1 Grounds for suspension

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

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

II.15.2.2 Procedure for suspension

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

- (a) informing it of:
 - (i) its intention to suspend the implementation;
 - (ii) the reasons for suspension;
 - (iii) the necessary conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.15.2.1; and
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

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

- (a) the suspension of the implementation;

- (b) the reasons for suspension; and
- (c) the final conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.15.2.1; or
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.15.2.1.

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

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

During the suspension, no work may be done. Ongoing work packages must be interrupted and no new work packages may be started.

II.15.2.3 Resuming implementation

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

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

- (a) informing it that the conditions for lifting the suspension are met; and
- (b) requiring it to present a request for amendment of the Agreement as provided for in Article II.15.3. This obligation does not apply if the Agreement is terminated in accordance with Articles II.16.1 or points (b), (f) or (g) of Article II.16.2.1.

II.15.3 Effects of the suspension

If the implementation of the *action* can be resumed and the Agreement has not been terminated, an amendment to the Agreement must be made in accordance with Article II.12 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.

Work done during the period of suspension that relate to the implementation of the suspended *action* or the suspended part of it may not be covered by the grant.

Suspending implementation of the *action* does not affect EUSPA's right to terminate the Agreement in accordance with Article II.16.2, reduce the grant or recover amounts unduly paid in accordance with Articles II.21.2 and II.22.

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

ARTICLE II.16 – TERMINATION OF THE AGREEMENT

II.16.1 Termination of the Agreement by the beneficiary

The beneficiary may terminate the Agreement.

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

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

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

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

II.16.2 Termination of the Agreement by EUSPA

II.16.2.1 Grounds for termination

EUSPA may terminate the Agreement, if:

- (a) a change to the beneficiary's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Agreement substantially or calls into question the decision to award the grant;
- (b) the beneficiary does not implement the *action* as described in Annex I or it fails to comply with another substantial obligation incumbent on it under the Agreement;
- (c) the implementation of the *action* is prevented or suspended due to *force majeure* or exceptional circumstances and either:
 - (i) resumption is impossible; or
 - (ii) the necessary changes to the Agreement would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;
- (d) the beneficiary or any natural or legal person that assumes unlimited liability for the debts of the beneficiary comes under any of the situations provided for in points (a) or (b) of Article 138 (1) of the Financial Regulation;⁶
- (e) the beneficiary or any *natural or legal person who is a member of the administrative, management or supervisory body of a beneficiary or who has powers of representation, decision or control* over such beneficiary or any natural person working for the beneficiary who is essential for the award or implementation of the grant agreement is subject to any of the situations provided for in points (c), (d), (e), (f), (g) or (h) of Article 138 (1) or to Article 138 (2) of the Financial Regulation;
- (f) EUSPA has evidence that the beneficiary or any *related person* has committed *substantial errors, irregularities or fraud* in the award procedure or while implementing the Agreement,

⁶ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union..

including if the beneficiary or *related person* has submitted false information or failed to provide required information;

- (g) EUSPA has evidence that the beneficiary has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other European Union or Euratom grants awarded to it under similar conditions and such errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (h) EUSPA has sent the beneficiary a *formal notification* asking it to end the participation of its affiliated entity because that entity is in a situation provided for in points (f), (g) or (h) and the beneficiary has failed to request an amendment ending the participation of the entity and reallocating its tasks.

II.16.2.2 Procedure for termination

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

- (a) informing it of:
 - (i) its intention to terminate;
 - (ii) the reasons for termination; and
- (b) requiring it, within 45 calendar days of receiving the formal notification:
 - (i) to submit observations; and
 - (ii) in the case of point (b) of Article II.16.2.1, to inform EUSPA of the measures to ensure compliance with the obligations under the Agreement.

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

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

The termination takes effect:

- (a) for terminations under points (a), (b) and (d) of Article II.16.2.1: on the day specified in the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above);
- (b) for terminations under points (c), (e), (f), (g) and (h) of Article II.16.2.1: on the day after the beneficiary receives the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above).

II.16.3 Effects of termination

II.16.3.1 Effects of terminating the Agreement:

Within 60 (sixty) calendar days from the day on which the termination takes effect, the beneficiary must submit a request for payment of the balance as provided for in Article I.5.2.

If EUSPA does not receive the request for payment of the balance by the above deadline, no lump sums contributions will be paid by EUSPA.

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

EUSPA calculates the final amount of the grant as referred to in Article II.21 and the balance as referred to in Article I.6.3 on the basis of the reports submitted. Only lump sum contributions for activities undertaken and work packages and deliverables approved by EUSPA before the date when the termination takes effect or the end date of the *implementation period* as specified in Article I.2.2, whichever is the earliest, must be taken into account. Partial lump sum contributions for work packages that were not completed (e.g. due to technical reasons) may exceptionally be taken into account.

EUSPA may reduce the grant in accordance with Article II.21.2 in case of:

- (a) improper termination of the Agreement by the beneficiary within the meaning of Article II.16.1; or
- (b) termination of the Agreement by EUSPA on any of the grounds set out in points (b), (e), (f), (g) and (h) of Article II.16.2.1.

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

After termination, the beneficiary's obligations continue to apply, in particular those under Articles I.4, II.6, II.8, II.9, II.13, II.23 and any additional provisions on the use of the results, as set out in the Special Conditions.

ARTICLE II.17 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- II.17.1** The Agreement is governed by the applicable European Union law, complemented, where necessary, by the law of Belgium.
- II.17.2** In accordance with Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, has sole jurisdiction for any dispute arising out of or in connection with the present Agreement, if such dispute cannot be settled amicably.

ARTICLE II.18 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARY

If the Special Conditions contain a provision on entities affiliated to the beneficiary, lump sums contributions of such an entity are eligible, if:

- (a) they satisfy the same conditions under Article I.4 as apply to the beneficiary; and
- (b) the beneficiary ensures that the conditions applicable to it under Articles II.4, II.5, II.6, II.8, II.10, and II.23 are also applicable to the affiliated entity.

ARTICLE II.19 – NON-COMPLIANCE WITH THE REPORTING OBLIGATIONS

EUSPA may terminate the Agreement as provided for in Article II.16.2.1(b) and may reduce the grant as provided for in Article II.21.2 if the beneficiary:

- (a) did not submit a request for payment of the balance accompanied by the documents referred to in Article I.5.2 within 60 calendar days following the end of the project; and
- (b) still fails to submit such a request within further 60 calendar days following a written reminder sent by EUSPA.

ARTICLE II.20 – SUSPENSION OF PAYMENTS AND TIME LIMIT FOR PAYMENT

II.20.1 Suspension of payments

II.20.1.1 Grounds for suspension

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

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

II.20.1.2 Procedure for suspension

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

- (a) informing it of:
 - (i) its intention to suspend payments;
 - (ii) the reasons for suspension;
 - (iii) in the cases referred to in points (a) and (b) of Article II.20.1.1, the conditions that need to be met for payments to resume; and
- (b) inviting it to submit observations within 30 calendar days of receiving the *formal notification*.

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

- (a) the suspension of payments;
- (b) the reasons for suspension;

- (c) the final conditions under which payments may resume in the cases referred to in points (a) and (b) of Article II.20.1.1;
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.20.1.1.

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

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

II.20.1.3 Effects of suspension

During the period of suspension of payments the beneficiary is not entitled to submit any requests for payments and supporting documents referred to in Article I.5.2 .

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 next request for payment due following resumption of payments in accordance with the schedule laid down in Article I.5.1.

The suspension of payments does not affect the right of the beneficiary to suspend the implementation of the *action* as provided for in Article II.15.1 or to terminate the Agreement as provided for in Article II.16.1.

II.20.1.4 Resuming payments

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

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

II.20.2 Suspension of the time limit for payments

II.20.2.1 EUSPA may at any moment suspend the time limit for payment specified in Articles I.6.2 and I.6.3 if a request for payment cannot be approved because:

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

II.20.2.2 EUSPA must send a *formal notification* to the beneficiary informing it of:

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

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

II.20.2.3 If the conditions for suspending the payment deadline are no longer met, the suspension will be lifted and the remaining period will resume.

If the suspension exceeds two months, the beneficiary may request EUSPA if the suspension will continue.

If the payment deadline has been suspended because the technical reports or financial statements do not comply with the Agreement and the revised report or statement is not submitted or was submitted but is also rejected, EUSPA may terminate the Agreement as provided for in Article II.16.2.1(b) and reduce the grant as provided for in Article II.21.2.

ARTICLE II.21 – CALCULATION OF THE FINAL AMOUNT OF THE GRANT

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

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

Step 1 — Calculation of the total accepted EU contribution

Step 2 — Reduction due to improper implementation, *irregularity, fraud or breach of other obligations*.

II.21.1 Step 1 — Calculation of the ‘total accepted EU contribution’

EUSPA will first calculate the ‘accepted EU contribution’ for the action, by calculating lump sum contributions for the approved and work packages and related deliverables.

After that, EUSPA will take into account grant reductions from Agreement termination (if any) in line with Article II.16.3.1. The resulting amount is the ‘total accepted EU contribution’.

II.21.2 Step 2 — Reduction due to improper implementation, irregularity, fraud or breach of other obligations

EUSPA may reduce the *maximum amount of the grant* if the *action* has not been implemented properly as described in Annex I (i.e. if it has not been implemented or has been implemented poorly, partially or late), or in case of *irregularity, fraud or breach of other obligations* under the Agreement.

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

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

- (a) informing it of:
 - (i) its intention to reduce the *maximum amount of the grant*;
 - (ii) the amount by which it intends to reduce the grant;
 - (iii) the reasons for reduction; and

- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

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

If the grant is reduced, EUSPA must calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the *action* or to the seriousness of the breach of obligations) from the *maximum amount of the grant*.

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

- (a) the amount obtained following Steps 1; or
- (b) the reduced grant amount following Step 2.

ARTICLE II.22 - RECOVERY

II.22.1 Recovery

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

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

II.22.2 Recovery procedure

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

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

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

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

- (a) by offsetting it, without the beneficiary's prior consent, against any amounts owed to the beneficiary by EUSPA ('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.6.2 ('drawing on the financial guarantee');
- (c) by taking legal action as provided for in Article II.17.2 or in the Special Conditions.

II.22.3 Interest on late payment

If payment is not made by the date in the debit note, the amount to be recovered will be increased by late-payment interest at the rate set out in Article I.6.5 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.22.4 Bank charges

Bank charges incurred in the recovery process must be borne by the beneficiary, unless Directive (EU) 2015/2366⁷ applies.

ARTICLE II.23 – CHECKS, AUDITS AND EVALUATIONS

II.23.1 Checks, audits, intermediate and final evaluations

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

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

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

EUSPA's checks, audits or evaluations may be carried out either directly by EUSPA's own staff or by any other outside body authorised to do so on its behalf. Upon beneficiary's request, 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 beneficiary has a 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 EUSPA to assess the merits of such an objection and if shared, select another outside body.

⁷ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance)

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

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

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

II.23.2 Duty to keep documents

The beneficiary shall, at least for a period of five years starting from the date of payment of the balance, keep records and other supporting documents to prove the proper implementation of the action (proper implementation of the work and/or achievement of the results as described in Annex 1) in line with the accepted standards in the respective field (if any).

Beneficiary does not need to keep specific records on the actual costs incurred.

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

The periods set out in the first and second subparagraphs are longer if there are ongoing checks, reviews, audits, investigations, appeals, litigation or pursuit of claims concerning the grant, including in the cases referred to in Article II.23.7. In such cases, the beneficiary must keep the documents until the end of these procedures.

The records and supporting documents shall be made available upon request (see Article II.23.3) or in the context of checks, reviews, audits or investigations (see Article II.23.1).

The beneficiary shall keep the original documents. Digital and digitalised documents are considered originals if they are authorised by the applicable national law. EUSPA may accept non-original documents if they offer a comparable level of assurance.

II.23.3 Obligation to provide information

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

If the beneficiary does not comply with the obligation set out in the first subparagraph, EUSPA may consider any lump sums contribution insufficiently substantiated by information provided by the beneficiary as ineligible.

II.23.4 On-the-spot visits

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

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

The beneficiary may implement measures to ensure compliance with applicable security and confidentiality obligations which are binding on the beneficiary, provided that such measures do not unduly prevent the verification of the action.

If the beneficiary refuses to provide access to the sites, premises and information as required in the first and second subparagraphs, EUSPA may consider any lump sums contribution insufficiently substantiated by information provided by the beneficiary as ineligible.

II.23.5 Contradictory audit procedure

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

II.23.6 Effects of audit findings

On the basis of the final audit findings, EUSPA may take the measures it considers necessary, including recovery of all or part of the payments made by it, as provided for in Article II.22.

In the case of final audit findings after the payment of the balance, the amount to be recovered corresponds to the difference between the revised final amount of the grant, determined in accordance with Article II.21, and the total amount paid to the beneficiary under the Agreement for the implementation of the *action*.

II.23.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations

II.23.7.1 EUSPA may extend audit findings from other grants to this grant if:

- (a) the beneficiary is found to have committed systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations in other EU or Euratom grants awarded under similar conditions and such errors, *irregularities*, *fraud* or breach have a material impact on this grant; and
- (b) the final audit findings are sent to the beneficiary through a *formal notification*, together with the list of grants affected by the findings within the period referred to in Article II.23.1

The extension of findings may lead to:

- (a) the rejection of lump sums contributions as ineligible;
- (b) reduction of the grant as provided for in Article II.21.2;
- (c) recovery of undue amounts as provided for in Article II.22;
- (d) suspension of payments as provided for in Article II.20.1;
- (e) suspension of the *action* implementation as provided for in Article II.15.2;
- (f) termination as provided for in Article II.16.2.

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

(a) If the findings concern rejections of lump sum contributions the procedure is as follows:

Step 1 — The *formal notification* must include:

- (i) an invitation to submit observations on the list of grants affected by the findings;
- (ii) a request to submit revised financial statements for all grants affected;
- (iii) where possible, the correction rate for extrapolation established by EUSPA to calculate the amounts to be rejected on the basis of the systemic or recurrent errors, *irregularities, fraud* or breach of obligations, if the beneficiary:

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

- will not submit revised financial statements.

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

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

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

- (i) that it accepts the alternative method;
- (ii) of the revised eligible costs determined by applying this method.

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

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

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

- (i) the revised final amount of the grant, determined in accordance with Article II.21 on the basis of the revised eligible amounts declared by the beneficiary and approved by EUSPA or on the basis of the revised eligible amounts after extrapolation; and
- (ii) the total amount paid to the beneficiary under the Agreement for the implementation of the *action*;

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

Step 1 — The *formal notification* must include:

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

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

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

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

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

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

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

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

II.23.8 Rights of OLAF

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

Under Council Regulation (Euratom, EC) No 2185/96⁸ and Regulation (EU, Euratom) No 883/2013⁹ OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against *fraud* and other *irregularities*.

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

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

II.23.9 Rights of the European Court of Auditors and EPPO

⁸ 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.

⁹ 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).

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

ARTICLE II.24 — REJECTION OF CONTRIBUTIONS

II.24.1 Conditions

EUSPA will — at final payment or afterwards — reject any lump sum contributions which are ineligible (see Article I.4), in particular following checks, reviews, audits or investigations (see Article 23).

The rejection may also be based on the extension of findings from other grants to this grant (see Article II.23.7).

Ineligible lump sum contributions will be rejected.

II.24.2 Procedure

If the rejection does not lead to a recovery, EUSPA will formally notify the beneficiary of the rejection, the amounts and the reasons why. The beneficiary may — within 30 days of receiving notification — submit observations if it disagrees with the rejection (payment review procedure).

If the rejection leads to a recovery, EUSPA will follow the contradictory procedure with pre-information letter set out in Article 22.

II.24.3 Effects

If EUSPA rejects lump sum contributions, it will deduct them from the contributions declared and then calculate the amount due (and, if needed, make a recovery; see Article 22).

ANNEX IV – LIST OF PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS

NAME OF APPLICANT:

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