



# Model Grant Agreement

For the

## **Pilot Project on defence research**

**29 April 2016**

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

**AGREEMENT NUMBER – [insert]**

This Grant Agreement ('the Agreement') is concluded between the following parties:

on the one part,

The **European Defence Agency** (hereinafter 'EDA'), under the powers defined in the delegation agreement (hereinafter "Delegation Agreement" signed with the European Commission on 16 November 2015 (hereinafter 'the Commission')), represented for the purposes of signature of the Agreement by [function, directorate, forename and surname],

and

on the other part,

**1. 'the consortium leader'**

[full name]

[official legal status]

[official address in full]

represented for the purposes of signature of the Agreement by [function, forename and surname]

and the following **consortium participants**:

2. [full official name - established in [country]]

3. [full official name - established in [country]]

[idem for each consortium participant]

duly represented by the consortium leader by virtue of the mandate[s] included in Annex IV for the signature of the Agreement.

The parties referred to above

**HAVE AGREED**

to the Special Conditions ('the Special Conditions') and the following Annexes:

- Annex I Description of the Action
- Annex II General Conditions ('the General Conditions')
- Annex III Estimated budget of the Action
- Annex IV Mandate[s] provided to the consortium leader by the other participants
- Annex V Model technical report
- Annex VI Model financial statement
- Annex VII Model terms of reference for the certificate on the financial statements

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.

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## SPECIAL CONDITIONS

### ARTICLE I.1 – SUBJECT MATTER OF THE AGREEMENT

EDA, under the powers delegated by the European Commission, 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 this Agreement, for the action entitled [insert title of the **action**] (“the Action”) as described in Annex I.

With the signature of 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 shall enter into force on the date on which the last party signs.
- I.2.2 The Action runs for [insert **number**] months starting as of the date of the kick-off meeting, estimated to take place within 1 months of entry into force.

### ARTICLE I.3 - MAXIMUM AMOUNT AND FORM OF THE GRANT

- I.3.1 The Maximum amount of the grant is EUR [insert **amount**]. The final grant amount depends on the actual extent to which the Action is implemented in accordance with the Agreement’s terms and conditions.
- I.3.2 The grant reimburses 100% of the beneficiaries’ actual direct eligible costs for the Action and a flat rate of 25% of actual direct eligible costs for the indirect costs.
- I.3.3 The reimbursement rate(s) are applied to the eligible costs (actual costs, unit costs and flat-rate costs; see Part B – Financial Provisions of this Agreement) declared by the beneficiaries [and linked third parties] and approved by EDA.
- I.3.4 If the amount obtained by applying the aforementioned percentages to the actual eligible costs is higher than the maximum grant amount set out in Article I.3.1, it will be limited to the latter.
- I.3.5 The grant must not produce a profit. Notwithstanding, if there is a profit, it will be deducted from the amount obtained of the grant.

‘Profit’ means the surplus of the Action’s total receipts over the Action’s total eligible costs. The ‘Action’s total eligible costs’ are the consolidated total eligible costs approved by the Agency. The ‘Action’s total receipts’ are the consolidated total receipts generated during its time span.

- I.3.6 The following are considered receipts:
  - (a) income generated by the Action - if the income is generated from selling equipment or other assets purchased under the Agreement, the receipt is up to the amount declared as eligible under the Agreement;
  - (b) financial contributions given by third parties to the beneficiary [or to a linked third party] specifically to be used for the Action; and,
  - (c) in-kind contributions provided by third parties free of charge and specifically to be used for the Action, if they have been declared as eligible costs.

**I.3.7** The following are however not considered receipts:

- (a) income generated by exploiting the Action's results;
- (b) financial contributions by third parties, if they may be used to cover costs other than the eligible costs;
- (c) financial contributions by third parties with no obligation to repay any amount unused at the end of the period.

**I.3.8** If – after the payment of the balance (in particular, after checks, reviews, audits or investigations see Article II- 28) – EDA rejects costs or reduces the grant, it will calculate the 'revised final grant amount' for the beneficiary concerned by the findings. This amount is calculated by the Agency on the basis of the findings, as follows:

- (a) in case of rejection of costs: by applying the reimbursement rate to the revised eligible costs approved by the Agency for the beneficiary concerned;
- (b) in case of reduction of the grant: by calculating the concerned beneficiary's share in the grant amount reduced in proportion to its improper implementation of the Action or to the seriousness of its breach of obligations.

**I.3.9** In case of rejection of costs and reduction of the grant, the revised final grant amount for the beneficiary concerned will be the lower of the two amounts above.**ARTICLE I.4 – REPORTING, PAYMENT AND SUPPORTING DOCUMENTS****I.4.1 - Reporting periods**

The Action is divided into the following reporting periods:

Reporting period 1: from month 1 to month [X]

Reporting period 2: from month [X+1] to month [Y]

[same for other reporting periods until last month of the Action]

**I.4.2 - Annual implementation report**

Annually, by 15 January following the year of implementation of the Action, the beneficiary shall provide EDA with an annual implementation report, indicating:

- (a) a summary description of the implementation of the Action and the use of the funds allocated to it, covering technical, schedule and financial aspects;
- (b) its accounts on the expenditure incurred in the implementation of the Action.
- (c) a summary of the final audit report, including an analysis of the nature and extent of errors and weaknesses identified, as well as corrective Action taken or planned.

**I.4.3 - Request for pre-financing payment and supporting documents**

The consortium leader shall submit a request for pre-financing payment equivalent to maximum 25% of the amount referred to under point I.3.1 above within 60 calendar days following the Agreement signature.

The request must be accompanied by a financial guarantee *[if considered necessary by EDA depending on Financial viability of beneficiaries]*.

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

EDA payments shall be executed within 30 days from the submission of the request of pre-financing. It shall be subject to EDA having received the corresponding funds from the European Commission in accordance with the aforementioned Delegation Agreement

#### **I.4.4 - Interim payment and supporting documents**

The consortium leader shall submit a request for an interim payment equivalent to maximum 25% of the amount referred to under point I.3.1 within 60 calendar days following the end of [period to be specified].

This request must be accompanied by the following documents:

- (a) an interim report ('interim technical report'), drawn up in accordance with Annex V, containing:
  - (i) the information needed to justify the eligible costs declared or the contribution requested on the basis of unit costs and lump sums (where the grant takes the form of the reimbursement of unit or lump sum costs, or of a unit or lump sum contribution), and
  - (ii) information on subcontracting as referred to in Article II.12.1(d);
- (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.
 

It must be drawn up in accordance with the structure of the estimated budget set out in Annex III and with Annex VI and detail the amounts for each of the forms of grant set out in Article I.3.2 for the reporting period concerned;
- (c) a certificate on the financial statements and underlying accounts ('certificate on the financial statements') for each beneficiary and for each affiliated entity, if:
  - (i) the cumulative amount of payments the beneficiary requests as reimbursement of actual costs as referred to in Article I.3.2 (and for which no certificate has yet been submitted) is EUR 325 000 or more;
  - (ii) the maximum grant amount indicated, for that beneficiary and its affiliated entities, in the estimated budget as reimbursement of actual costs is EUR 750 000 or more.

This 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.

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

[As an exception, the following beneficiaries and affiliated entities must not submit a certificate on the financial statements: [insert beneficiaries or affiliated entities]. <sup>1</sup>]

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<sup>1</sup> To be added where the authorising officer responsible decides to waive the obligation to provide a certificate on the financial statements and underlying accounts (see Article 207(3) RAP):

- for beneficiaries which are public bodies or international organisations;
- for interim payments, for beneficiaries of grants in connection with humanitarian aid, civil protection emergency operations and the management of crisis situations;

The consortium leader must certify that the information provided in the request for interim payment is full, reliable and true.

It 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.28.

EDA payments shall be executed within 60 days from the acceptance of the interim payment request and supporting documents referred to in this Article, subject to EDA having received the corresponding funds from the European Commission in accordance with the aforementioned Delegation Agreement.

#### **I.4.5 - Payment of the balance and supporting documents**

The consortium leader must submit a request for payment of the balance within 60 calendar days following the end of the Action.

This request must be accompanied by the following documents:

- (a) a final report on implementation of the Action ('final technical report'), drawn up in accordance with Annex V, containing:
  - (i) the information needed to justify the eligible costs declared or the contribution requested on the basis of unit costs and lump sums (where the grant takes the form of the reimbursement of unit or lump sum costs or of a unit or lump sum contribution in accordance with Article I.3.2, and
  - (ii) information on subcontracting as referred to in Article II.12.1(d);

and a publishable summary
- (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.

It must be drawn up in accordance with the structure of the estimated budget set out in Annex III and with Annex VI and detail the amounts for each of the forms of grant set out in Article I.3.2 for the last reporting period;

- (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.26.3 for each beneficiary and its affiliated entities.

It must be drawn up in accordance with Annex VI;

- (d) a certificate on the financial statements and underlying accounts ('certificate on the financial statements') for each beneficiary and for each affiliated entity, if:

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- for beneficiaries of multiple grants which have provided independent certification offering equivalent guarantees on the control system and methodology used to prepare their claims;

- where an audit has been or will be directly done by the Commission's own staff or by a body authorised to do so on its behalf.

- (i) the cumulative amount of payments the beneficiary requests as reimbursement of actual costs as referred to in Article I.3.2 (and for which no certificate has yet been submitted) is EUR 325 000 or more;
- (ii) the maximum grant amount indicated, for that beneficiary and its affiliated entities, in the estimated budget as reimbursement of actual costs is EUR 750 000 or more.

This 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.

It 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 are real, accurately recorded and eligible in accordance with the Agreement.

In addition, it must certify that all the receipts referred to in Article II.26.3 have been declared.

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

It 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.28.

In addition, it must certify that all the receipts referred to in Article II.26.3 have been declared.

EDA payments shall be executed within 60 days from the acceptance of the payment of the balance request and supporting documents referred to in this Article, subject to EDA having received the corresponding funds from the European Commission in accordance with the aforementioned Delegation Agreement.

#### **I.4.6 - Currency for requests for payment and financial statements**

Requests for payment and financial statements ('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 :

<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, the conversion must be made at the average of the monthly accounting rates established by EDA and published on its website, determined over the corresponding reporting period:

[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),

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.4.7 - 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**

#### **I.5.1 - Payments to be made**

EDA shall make the following payments to the consortium leader:

- (a) one pre-financing payment to in Article I.4.2;
- (b) one interim payment, on the basis of the request[s] for interim payment referred to in Article I.4.3;
- (c) one payment of the balance, on the basis of the request for payment of the balance referred to in Article I.4.4.

EDA payments shall be executed subject to EDA having received the corresponding funds from the European Commission in accordance with the aforementioned Delegation Agreement.

### **I.5.2 - Interest on late payment**

If EDA 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 euros ('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 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 EDA 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. The interest payable is not considered for the purposes of 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 consortium leader only upon request submitted within two months of receiving late payment.

### **I.5.3 - Currency for payments**

EDA must make payments in euro.

### **I.5.4 - Date of payment**

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

### **I.5.5 - Costs of payment transfers**

Costs of the payment transfers are borne in the following way:

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

### **I.5.6 - Payments to the consortium leader**

EDA must make payments to the consortium leader.

Payments to the consortium leader discharge EDA from its payment obligation.

## ARTICLE I.6 – BANK ACCOUNT FOR PAYMENTS

All payments must be made to the consortium leader’s bank account as indicated below:

Name of bank: [...]

Precise denomination of the account holder: [...]

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

[IBAN code: [...]]<sup>2</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.8 is: **ESI Directorate**.

### I.7.2 - Communication details of EDA

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

Address: ESI Directorate–Pilot Project, Rue des Drapiers 17-23, 1050 Brussels, Belgium

E-mail address: [EDA-PilotProject@eda.europa.eu](mailto:EDA-PilotProject@eda.europa.eu)

Nevertheless, any communication related to contractual aspects of financial aspects shall be sent to the following e-mail address:

[grant@eda.europa.eu](mailto:grant@eda.europa.eu)

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

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

[Full name]

[Function]

[Name of the entity]

[Full official address]

E-mail address: [complete]

## ARTICLE I.8 – ENTITIES AFFILIATED TO THE 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];

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<sup>2</sup> BIC or SWIFT code applies for countries where the IBAN code does not apply.

[idem for further affiliated entities]

#### ARTICLE I.9 – OBLIGATION TO CONCLUDE AN INTERNAL CO-OPERATION AGREEMENT

The beneficiaries must conclude an internal co-operation agreement including provisions about:

- (a) their operation and co-ordination, and
- (b) all internal aspects of the management of the beneficiaries and the implementation of the *Action*.

#### ARTICLE I.10 – SPECIAL PROVISIONS ON BUDGET TRANSFERS

As an exception to the first subparagraph of Article II.22, budget transfers [between beneficiaries] [between budget categories] are limited to [...] % of [the estimated eligible costs of the *Action* specified in Article I.3.2] [the amount of the budget of the beneficiary for which the transfer is intended] [the amount of each budget category for which the transfer is intended].]

#### SIGNATURES

For the consortium leader

For EDA

[function/forename/surname]

[forename/surname]

[signature]

[signature]

Done at [place], [date]

Done at [place], [date]



**ANNEX I**  
**DESCRIPTION OF THE ACTION**

[insert description of the action]

## ANNEX II GENERAL CONDITIONS

### PART A – LEGAL AND ADMINISTRATIVE PROVISIONS

#### ARTICLE II.1 – DEFINITIONS

The following definitions apply for the purpose of the Agreement:

**'Access rights'**: are the rights to use results or background under the terms and conditions laid down in accordance with this Agreement.

**'Action'**: is the project for which the grant is awarded, to be implemented by the beneficiaries as described in Annex I.

**'Background'**: any data, know-how or information whatever its form or nature, tangible or intangible, including any rights such as intellectual property rights, which is; (i) held by participants prior to their accession to the action and (ii) needed for carrying out the Action or for exploiting the results of the Action.

**'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 EDA 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.

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

**'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.

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

**'Implementation period'**: the period of implementation of the activities forming part of the Action as specified in Article I.2.2.

**'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.

**'Irregularities'**: 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.

**'Maximum amount of the grant'**: the maximum EU contribution to the Action as defined in Article I.3.1.

**'Pre-existing right'**: any industrial and intellectual property right on Background; 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'** : any tangible or intangible output of the Action, such as data, knowledge or information, that is generated in the Action, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights;

**'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

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 (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 for the proper implementation of the Action, consistent with the provisions of the Agreement; where provided for 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 consortium leader immediately of any events or circumstances likely to affect or delay the implementation of the Action of which the beneficiary is aware;
- (b) submit in due time to the consortium leader:

- (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.28
- (iii) any other information to be provided to EDA 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 consortium leader**

The consortium leader:

- (a) must monitor that the Action is implemented in accordance with the Agreement;
- (b) is the intermediary for all communications between the beneficiaries and EDA, except if provided otherwise in the Agreement, and, in particular, the consortium leader:
  - (i) must immediately inform EDA:
    - 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 likely to affect or delay the implementation of the Action, of which the consortium leader is aware.
  - (ii) is responsible for supplying all documents and information required under the Agreement to EDA, except if provided otherwise in the Agreement; where information is required from the other beneficiaries, the consortium leader is responsible for obtaining and verifying this information before passing it on to EDA;
- (c) must make the appropriate arrangements for providing any financial guarantees required under the Agreement;
- (d) must establish the requests for payment in accordance with the Agreement;
- (e) where it is designated as the sole recipient of payments on behalf of all of the beneficiaries, 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.28.

The consortium leader 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.

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 EDA using the postal or courier services is considered to have been received by EDA 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** Neither the European Union, nor the European Commission nor EDA may 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 EDA 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 EDA 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.

EDA 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 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) the disclosure of the confidential information or documents is required by law.

## **ARTICLE II.7 – SECURITY-RELATED OBLIGATIONS**

### **II.7.1 - Results with a security recommendation**

**[OPTION if applicable to the grant:**

‘Results with a security recommendation’ (see Annex I) may be disclosed or disseminated only under the conditions set out in Annex I. Before disclosing such results to a third party (including linked third parties, such as affiliated entities), a Beneficiary must inform the coordinator, which must request written approval from the Agency.]

**[OPTION: Not applicable]**

### **II.7.2 - Classified results**

**[OPTION if applicable to the grant:**

Activities related to ‘classified results’ (see Annex I) must comply with the ‘**security requirements**’ (Security Aspect Letter (SAL) and the Security Classification Guide (SCG)) set out in Annex I (description of the action) until they are declassified.

Action tasks related to classified results may not be subcontracted without prior explicit written approval from the Agency.

The Beneficiaries must inform the coordinator, which must immediately inform the Agency, of any changes in the security context and, if necessary, request for Annex I to be amended (see Article II.14).]

**[OPTION: Not applicable]**

### **II.7.3 - Activities involving dual-use goods or dangerous materials and substances**

**[OPTION: if applicable to the grant**

Activities involving dual-use goods or dangerous materials and substances must comply with applicable EU, national and international law.

Before the beginning of the activity, the coordinator must submit to the Agency a copy of any export or transfer licences required under EU, national or international law.]

**[OPTION: Not applicable]**

### **II.7.4 Consequences of non-compliance**

**[OPTION to be used if II.7.1, II.7.2 and/or II.7.3 are applicable:**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article II.26.4).

Such breaches may also lead to any of the other measures available.]

[OPTION: Not applicable]

## ARTICLE II.8 – PROCESSING OF PERSONAL DATA

### II.8.1 - Processing of personal data by EDA

Any personal data included in the Agreement must be processed by EDA in accordance with Article 31 of Council Decision (CSFP) 2015/1835 which establishes that the rules laid down in Regulation (EC) No 45/2001<sup>3</sup> shall apply to the processing of personal data by EDA.

Such data must be processed by the data controller identified in Article I.7.1 solely for the purposes of the implementation, management and monitoring of the Agreement or protecting the financial interests of the EU, including checks, audits and investigations in accordance with Article II.28.

The beneficiaries have the right to access and correct their own personal data. For this purpose, they must send any queries about the processing of their personal data to the data controller identified in Article I.7.1.

The beneficiaries may have recourse at any time to the European Data Protection Supervisor.

### II.8.2 - Processing of personal data by the beneficiaries

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

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

The beneficiaries must 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:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;

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<sup>3</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

- (d) ensure that personal data processed on behalf of third parties can be processed only in the manner prescribed by EDA;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design their organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.9 – VISIBILITY OF UNION FUNDING AND EDA**

### **II.9.1 - Information on Union funding and use of EDA and European Union emblem**

Unless EDA 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 Union and
- (b) display EDA and European Union emblem.

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

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

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

### **II.9.2 - Disclaimers excluding European Commission and EDA 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 the Commission and/or EDA are not responsible for any use that may be made of the information it contains.

## **ARTICLE II.10 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

### **II.10.1 - Ownership of the results by the beneficiaries**

Unless stipulated otherwise in the Agreement, 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.

### **II.10.2 - Background and pre-existing rights**

The beneficiaries must:



- (a) identify the Background for their Action in any manner in a written agreement before accessing the Agreement;
- (b) establish a list specifying all pre-existing rights included in those results; and
- (c) provide this list to EDA 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.10.3 - Access to the results and of pre-existing rights by the Union (its institutions, bodies and agencies) and Member States**

The beneficiaries grant the Union (its institutions, bodies and agencies) and Member States the following rights to use the results of the Action:

- (a) royalty-free use, for the purpose of the development of their policies and programmes, limited to non-commercial and non-competitive use, and in particular, making available to persons working for EDA, the Commission and other 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;
- (c) communication to the public: subject to any restrictions due to the protection of intellectual property, security rules or legitimate interest, 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 Commission and/or EDA, 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 Union may be provided for in the Special Conditions.

The beneficiaries must ensure that the 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.

Information about the copyright owner must be inserted when the result is divulged by the Union. The copyright information must read: '© – year – name of the copyright owner. All rights reserved. Licenced to the European Union under conditions.'

Granting rights of use to the Union and the Member States does not affect its confidentiality obligations under Article II.6 nor the obligation of the beneficiaries under Article II.3.1.

With regard to results generated through Union funding the Commission may object to transfers of ownership or to grant of a license or sub-license to another entity registered or based outside the EU Member States, if it considers that such Action is inconsistent with the interests of the Union or security considerations. In such cases, the transfer or licensing shall not take place unless the Commission is satisfied that appropriate safeguards will be put in place. The Commission either through EDA or directly is to be notified in advance of any such transfer or licensing.

#### **II.10.4 - Consortium members' rights**

A member of the consortium shall enjoy access rights to the results and the background of another member of the consortium if this is needed by the former to exploit its own results. Subject to agreement, such access shall be granted under fair and reasonable conditions.

### **ARTICLE II.11 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION**

**II.11.1** Where 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 EDA, the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under Article II.28 also towards their contractors.

**II.11.2** Beneficiaries that are 'contracting authorities' within the meaning of Directive 2004/18/EC<sup>4</sup> or 'contracting entities' within the meaning of Directive 2004/17/EC<sup>5</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.10 are also applicable to the contractor.

**II.11.3** The beneficiaries remain solely responsible for carrying out the Action and for compliance with the provisions of the Agreement.

**II.11.4** If the beneficiaries breach their obligations under Article II.11.1 the costs related to the contract concerned are considered ineligible in accordance with Article II.20.2 (c), (d) and (e).

If the beneficiaries breach their obligations under Article II.11.2 the grant may be reduced in accordance with Article II.26.4.

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<sup>4</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>5</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

## ARTICLE II.12 – SUBCONTRACTING OF TASKS FORMING PART OF THE ACTION

### II.12.1 - Subcontracting conditions

Beneficiaries may subcontract tasks forming part of the Action, provided that, in addition to the conditions specified in Article II.11, 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 consortium leader and approved by EDA. Such an approval may be given by EDA:
  - (i) before any recourse to subcontracting, if the beneficiaries request an amendment in accordance with Article II.14 or
  - (ii) after recourse to subcontracting if it:
    - is specifically justified in the interim or final technical report referred to in Articles I.4.4 and I.4.5 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.12.2 - Breach of subcontracting conditions

If the beneficiaries breach their obligations under Article II.12.1 (a), (b), (c) or (d), the costs related to the contract concerned are considered ineligible.

If the beneficiaries breach their obligation under Article II.12.1 (e) the grant may be reduced in accordance with Article II.26.4.

## ARTICLE II.13 – FINANCIAL SUPPORT TO THIRD PARTIES

**II.13.1** Where the implementation of the Action requires giving financial support to third parties, the beneficiaries must give such financial support in accordance with the conditions specified in Annex I, which must at least contain:

- (a) the maximum amount of financial support; This amount may not exceed EUR 60 000 for each third party except where the financial support is the primary aim of the Action as specified in Annex I;
- (b) the criteria for determining the exact amount of the financial support;
- (c) the different types of activity that may receive financial support, on the basis of a fixed list;

- (d) the definition of the persons or categories of persons which may receive financial support;
- (e) the criteria for giving the financial support.

**II.13.2** As an exception to Article II.13.1, in case 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, which must at least contain:

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

**II.13.3** The beneficiaries must ensure that the conditions applicable to them under Articles II.4, II.5, II.6, II.8, II.10 and II.28 are also applicable to the third parties receiving financial support.

#### **ARTICLE II.14 – AMENDMENTS TO THE AGREEMENT**

**II.14.1** Any amendment to the Agreement must be made in writing.

**II.14.2** 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.14.3** 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.14.4** A request for amendment on behalf of the beneficiaries must be submitted by the consortium leader. If a change of consortium leader is requested without its agreement, the request must be submitted by all other beneficiaries and must be accompanied by the opinion of the consortium leader or proof that this opinion has been requested in writing.

**II.14.5** 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.15 – ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES**

**II.15.1** The beneficiaries may not assign any of their claims for payment against EDA to any third party, except if approved by EDA on the basis of a reasoned, written request by the consortium leader made on behalf of the beneficiaries.

If EDA has not accepted the assignment or the terms of it are not observed, the assignment has no effect on it.

**II.15.2** In no circumstances may an assignment release the beneficiaries from their obligations towards EDA.

#### **ARTICLE II.16 – FORCE MAJEURE**

**II.16.1** 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.16.2** 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.16.3** 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.17 – SUSPENSION OF THE IMPLEMENTATION OF THE ACTION**

##### **II.17.1 - Suspension of the implementation by the beneficiaries**

The consortium leader, 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 consortium leader must immediately inform EDA 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 consortium leader must inform EDA immediately and present a request for amendment of the Agreement as provided for in Article II.17.3. This obligation does not apply if the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.18.1, II.18.2 or points (c) or (d) of Article II.18.3.1.

##### **II.17.2 - Suspension of the implementation by EDA**

###### **II.17.2.1 - Grounds for suspension**

EDA may suspend the implementation of the Action or any part thereof:

- (a) if EDA 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 EDA has evidence that a beneficiary has committed, in other grants funded by the 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 EDA 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.17.2.2 - Procedure for suspension**

**Step 1** - Before suspending implementation of the Action, EDA must send a Formal notification to the consortium leader:

- (a) informing it of:
  - (i) its intention to suspend the implementation;
  - (ii) the reasons for suspension;
  - (iii) in the cases referred to in points (a) and (b) of Article II.17.2.1, the necessary conditions for resuming the implementation, and
- (b) inviting it to submit observations within 30 calendar days of receiving the Formal notification.

**Step 2** - If EDA does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a Formal notification to the consortium leader 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.17.2.1, the final conditions for resuming the implementation; or
- (d) in the case referred to in point (c) of Article II.17.2.1, the indicative date of completion of the necessary verification.

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

Otherwise, EDA must send a Formal notification to the consortium leader informing it that the suspension procedure is not continued.

### **II.17.2.3 - 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 EDA of any progress made.

If the conditions for resuming the implementation are met or the necessary verifications are carried out, EDA must send a Formal notification to the consortium leader:

- (a) informing it that the conditions for lifting the suspension are met and
- (b) inviting it to present a request for amendment of the Agreement as provided for in Article II.17.3. This obligation does not apply if the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.18.1, II.18.2 or points (c), (g) or (h) of Article II.18.3.1.

### **II.17.3 - 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.14 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 EDA's right to terminate the Agreement or participation of a beneficiary in accordance with Article II.18.3, reduce the grant or recover amounts unduly paid in accordance with Articles II.26.4 and II.27.

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

## **ARTICLE II.18 – TERMINATION OF THE AGREEMENT**

### **II.18.1 - Termination of the Agreement by the consortium leader**

The beneficiaries may terminate the Agreement.

The consortium leader must send a Formal notification of termination to EDA, 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 no reasons are given or if EDA considers 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.18.2 - Termination of the participation of one or more beneficiaries by the consortium leader**

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

The consortium leader must send a Formal notification of termination to EDA and inform the beneficiary concerned by termination.

If the consortium leader'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.18.4.2(a).

If no reasons are given or if EDA 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.18.3 - Termination of the Agreement or the participation of one or more beneficiaries by EDA**

#### **II.18.3.1 - Grounds for termination**

EDA 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) 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;
- (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 breach the principle of equal treatment of applicants;
- (d) a beneficiary or any 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 106 (1) of the Financial Regulation<sup>6</sup>;
- (e) a beneficiary or any related person is subject to any of the situations provided for in points (c), (d), (e) or (f) of Article 106 (1) or to Article 106 (2) of the Financial Regulation;
- (f) EDA 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;
- (g) EDA has evidence that a beneficiary has committed, in other 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
- (h) a beneficiary does not request an amendment to the Agreement to withdraw the participation of its affiliated entity which is in any of the situations provided for in points (f), (g) or (h) after having been requested to do so by EDA through a Formal notification.

#### **II.18.3.2 - Procedure for termination**

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<sup>6</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union



**Step 1** - Before terminating the Agreement or participation of one or more beneficiaries, EDA must send a Formal notification to the consortium leader:

- (a) informing it of:
  - (i) its intention to terminate;
  - (ii) the reasons for termination; and
- (b) inviting it, within 45 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.18.3.1, to inform EDA of the measures to ensure compliance with the obligations under the Agreement.

**Step 2** - If EDA does not receive observations or decides to pursue the procedure despite the observations it has received, it will send a Formal notification to the consortium leader informing it of the termination and the date on which it takes effect. The consortium leader must immediately inform the other beneficiaries of the termination.

Otherwise, EDA must send a Formal notification to the consortium leader 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.18.3.1: 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) of Article II.18.3.1: on the day after the Formal notification of termination referred to in the second sub-paragraph (Step 2) is received by the consortium leader.

## **II.18.4 - Effects of termination**

### **II.18.4.1 - Termination of the Agreement**

Within 60 calendar days from the day on which the termination takes effect, the consortium leader must submit a request for payment of the balance in accordance with Article I.4.5.

If EDA 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 EDA for breach of the obligation to submit the request for payment, the consortium leader may not submit any request for payment after termination. In that case the second subparagraph applies.

EDA calculates the final grant amount as referred to in Article II.26 and the balance as referred to in Article I.5.4 on the basis of the reports submitted. Only costs incurred until 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.

EDA may reduce the grant in accordance with Article II.26.4. in case of:

- (a) improper termination of the Agreement by the consortium leader within the meaning of Article II.18.1; or
- (b) termination of the Agreement by EDA on the grounds set out in points (c), (f), (g), (h) of Article II.18.3.1.

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

After termination, the beneficiaries' obligations, in particular those under Articles I.4, II.6, II.8, II.10, II.15, II.28 and any additional provisions on the use of the results as set out in the Special Conditions, continue to apply.

#### **II.18.4.2 Termination of the participation of one or more beneficiaries**

- (a) The consortium leader 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.

In case of termination by EDA, the request must be submitted within 60 calendar days from the day on which the termination takes effect.

In case of termination by the consortium leader, the request must be included in the Formal notification of termination referred to in Article II.18.2.

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

If the request for amendment is rejected by EDA, the Agreement may be terminated according to Article II.18.3.1 (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 consortium leader:
  - (i) a technical report in accordance with Annex V and
  - (ii) a financial statement covering the period from the end of the last reporting period to the date when termination takes effect, in accordance with Annex VI.

This information must be included by the consortium leader in 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 taken into account.

EDA may reduce the grant in accordance with Article II.26.4. in case of:

- (a) improper termination of the participation of a beneficiary by the consortium leader within the meaning of Article II.18.2 or
- (b) termination of the participation of a beneficiary by EDA on the grounds set out in points (c), (f), (g), (h) of Article II.18.3.1.

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

After termination, the concerned beneficiary's obligations, in particular those under Articles I.4, II.6, II.8, II.10, II.15, II.28 and any additional provisions on the use of the results as set out in the Special Conditions, continue to apply.

## **ARTICLE II.19 – APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISION**

- II.19.1** The Agreement is governed by the applicable Union law complemented, where necessary, by the law of Belgium.
- II.19.2** 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 Union and any beneficiary concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably.
- II.19.3** In accordance with Article 299 TFEU, for the purposes of recoveries within the meaning of Article II. 27 , the Commission may adopt an enforceable decision to impose pecuniary obligations on persons other than States.

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

## PART B – FINANCIAL PROVISIONS

### ARTICLE II.20 – ELIGIBLE COSTS

#### II.20.1 - 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.4.5;
- (b) they are indicated in the estimated budget of the Action 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.20.2 - Eligible direct costs

To be eligible, the direct cost of the Action must comply with the conditions of eligibility set out in Article II.20.1.

In particular, the following categories of costs are eligible direct costs, provided that they satisfy the conditions of eligibility set out in Article II.20.1 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:

- (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.11.1 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.11.1, 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.11.1;
- (f) costs entailed by subcontracts within the meaning of Article II.12, provided that the conditions laid down in Article II.13.1 (a), (b), (c) and (d) are met;
- (g) costs of financial support to third parties within the meaning of Article II.13, 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.20.3 - Eligible indirect costs**

Unless otherwise specified in the Article I.3.2, eligible indirect costs must be declared on the basis of a flat rate of 25% of the actual direct eligible costs.

### **II.20.4 - Ineligible costs**

In addition to any other costs which do not fulfil the conditions set out in Article II.20.1, 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 EDA 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 Union budget (including grants awarded by a Member State and financed from the Union budget and grants awarded by other bodies than EDA for the purpose of implementing the 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 Union budget during the period in question;
- (i) contributions in kind from third parties;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.

## **ARTICLE II.21 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED**

### **II.21.1 - Declaring costs and contributions**

The 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 by the actual number of units used or produced;
- (c) for lump sum costs or lump sum contributions: the global amount specified in Article I.3.2, subject to the proper implementation of the corresponding tasks or part of the Action as described in Annex I;
- (d) for flat-rate costs or flat-rate contributions: the amount obtained by applying the flat rate specified in Article I.3.2;
- (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, subject to the proper implementation of the corresponding tasks or part of the Action;
- (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.21.2 - Records and other documentation to support the costs and contributions declared**

If requested to do so in the context of the checks or audits described in Article II.28, the beneficiary must provide:

- (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 the proper implementation.

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;

- (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 the proper implementation;
- (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.21.3 - Conditions for compliance of the costs accounting practices**

**II.21.3.1** In the case of points (e), (f) and (g) of Article II.21.2, 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.21.3.2** Where EDA 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 EDA and
- (b) the beneficiary did not conceal any information for the purpose of their approval.

## **ARTICLE II.22 – 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.20 and II.21 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.11, II.12 and II.28 are also applicable to the entity.

### **ARTICLE II.23 – 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.14.

However, the beneficiaries may not add costs relating to subcontracts not provided for in Annex I, unless such additional subcontracts are approved in accordance with Article II.13.1(d).

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

### **ARTICLE II.24 – NON COMPLIANCE WITH REPORTING OBLIGATIONS**

EDA may terminate the Agreement in accordance with Article II.18.3.1(c) and may reduce the grant in accordance with Article II.26.4 if the consortium leader:

- (a) did not submit a request for interim payment or payment of the balance accompanied by the documents referred to in Articles I.4.3 or I.4.4 within 60 calendar days following the end of the corresponding reporting period, and
- (b) still fails to submit such a request within 60 calendar days following a written reminder sent by EDA.

### **ARTICLE II.25 – SUSPENSION OF PAYMENTS AND OF THE TIME LIMIT FOR PAYMENTS**

#### **II.25.1 - Suspension of payments**

##### **II.25.1.1 - Grounds for suspension**

EDA 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:

- (a) if EDA 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 EDA has evidence that a beneficiary has committed, in other grants funded by the 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 EDA 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.25.1.2 - Procedure for suspension**



**Step 1** - Before suspending payments, EDA must send a Formal notification to the consortium leader:

- (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.25.1.1, the necessary conditions for resuming payments and
- (b) inviting it to submit observations within 30 calendar days of receiving the Formal notification.

**Step 2** - If EDA does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a Formal notification to the consortium leader informing it of:

- (a) the suspension of payments;
- (b) the reasons for suspension;
- (c) in the cases referred to in points (a) and (b) of Article II.25.1.1, the final conditions for resuming the implementation;
- (d) in the case referred to in point (c) of Article II.25.1.1, the indicative date of completion of the necessary verification.

The consortium leader must immediately inform the other beneficiaries of the suspension. The suspension takes effect on the day the Formal notification of suspension (Step 2) is sent by EDA.

Otherwise, EDA must send a Formal notification to the consortium leader informing it that the suspension procedure is not continued.

### **II.25.1.3 - Effects of suspension**

During the period of suspension of payments the consortium leader is not entitled to submit:

- (a) any requests for payments and supporting documents referred to in Articles I.4.2, I.4.3 and I.4.4 or,
- (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 consortium leader to suspend the implementation of the Action in accordance with Article II.17.1 or to terminate the Agreement or the participation of a beneficiary in accordance with Article II.18.1 and Article II.18.2.

### **II.25.1.4 - Resuming payments**

In order to resume payments, the beneficiaries must endeavour to meet the notified conditions as soon as possible and must inform EDA of any progress made.

If the conditions for resuming payments are met the suspension will be lifted. EDA will send a Formal notification to the consortium leader.

## II.25.2 - Suspension of the time limit for payments

- (a) EDA 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:
- (i) it does not comply with the provisions of the Agreement, or
  - (ii) the appropriate supporting documents have not been produced, or
  - (iii) there is a doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.
- (b) EDA must send a Formal notification to the consortium leader informing it of:
- (i) the suspension and
  - (ii) the reasons for the suspension.

The suspension takes effect on the day the Formal notification is sent by EDA.

- (c) 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 consortium leader may request EDA if the suspension will continue.

If the payment deadline has been suspended due to the non-compliance of the technical reports or financial statements with the Agreement and the revised report or statement is not submitted or was submitted but is also rejected, EDA may terminate the Agreement or the participation of the beneficiary in accordance with Article II.18.3.1(c), and reduce the grant in accordance with Article II.26.4.

## ARTICLE II.26 – 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 EDA 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.26.1 - Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate of lump sum contributions

This step is applied as follows:

- (a) If, in accordance with Article I.3.2, the grant takes the form of the reimbursement of eligible costs, the reimbursement rate specified in that Article is applied to the eligible costs of the Action approved by EDA for the corresponding categories of costs, beneficiaries and affiliated entities;

- (b) If, in accordance with Article I.3.2, the grant takes the form of a unit contribution, the unit contribution specified in that Article is multiplied by the actual number of units approved by EDA for the corresponding beneficiaries and affiliated entities;
- (c) If, in accordance with Article I.3.2, the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the corresponding beneficiaries and affiliated entities is applied, subject to the approval by EDA of the proper implementation of the corresponding tasks or part of the Action in accordance with Annex I;
- (d) If, in accordance with Article I.3.2, the grant takes the form of a flat-rate contribution, the flat rate referred to in that Article is applied to the eligible costs or to the contribution approved by EDA 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.26.2 - Limit to the Maximum amount of the grant**

The total amount paid to the beneficiaries by EDA may in no circumstances exceed the Maximum amount of the grant.

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

### **II.26.3 - 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 EDA 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 consortium leader.

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 EDA in accordance with Article I.3.2.

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 EDA for the categories of costs referred to in Article I.3.2 (as compared to the amount calculated following Steps 1 and 2).

#### **II.26.4 - Reduction due to improper implementation or breach of other obligations**

EDA 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, EDA must send a Formal notification to the consortium leader:

- (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 calendar days of receiving the Formal notification.

If EDA does not receive any observations or decides to pursue reduction despite the observations it has received, it will send a Formal notification informing the consortium leader of its decision.

If the grant is reduced, EDA 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.27 – RECOVERY**

#### **II.27.1 - Recovery at the time of payment of the balance**

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

#### **II.27.2 - Recovery after payment of the balance**

Where an amount is to be recovered in accordance with Articles II.28.6, II.28.7 and II.28.8, the beneficiary concerned by the audit or OLAF findings must repay EDA the amount in question. Where the audit findings do not concern a specific beneficiary (or its affiliated entities), the consortium leader must repay EDA the amount in question, even if it has not been the final recipient of the amount due.

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

#### **II.27.3 - Recovery procedure**

Before recovery, EDA 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.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, EDA decides to pursue the recovery procedure, EDA 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, EDA will take action to recover the amount due:

- (a) by offsetting it, without the beneficiary's prior consent, against any amounts owed to the beneficiary concerned by the Commission, EDA or an executive agency (from the Union or the European Atomic Energy Community (Euratom) budget) ('offsetting'); this shall be done in coordination with the Commission.

In exceptional circumstances, to safeguard the financial interests of the Union, EDA may take action to 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.19.2 or with the Special Conditions or by adopting an enforceable decision in accordance with Article II.19.3.

#### **II.27.4 - 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.5.2 from the day following the date for payment in the debit note up to and including the date EDA receives full payment of the amount.

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

#### **II.27.5 - Bank charges**

Bank charges incurred in the recovery process must be borne by the beneficiary concerned, unless Directive 2007/64/EC<sup>7</sup> applies.

### **ARTICLE II.28 – CHECKS, AUDITS AND EVALUATION**

#### **II.28.1 - Technical and financial checks, audits, interim and final evaluations**

EDA 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.

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<sup>7</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p.1).

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

In addition, EDA may carry out interim or final evaluation of the impact of the Action measured against the objective of the Union programme concerned.

Checks, audits or evaluations made by EDA may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

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 EDA announcing it.

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

### **II.28.2 - 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 II.28.7. In such cases, the beneficiaries must keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

### **II.28.3 - Obligation to provide information**

Where a check, audit or evaluation is initiated before the payment of the balance, the consortium leader must provide any information, including information in electronic format, requested by EDA or by any other outside body authorised by it. Where appropriate, EDA 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, EDA 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.28.4 - On-the-spot visits**

During an on-the-spot visit, the beneficiaries must allow EDA and Commission staff and outside personnel authorised by EDA 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, EDA 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.28.5 - 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 EDA or its authorised representative to the beneficiary concerned, which must have 30 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 calendar days of expiry of the time limit for submission of observations.

#### **II.28.6 - Effects of audit findings**

On the basis of the final audit findings, EDA 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.27.

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.26, and the total amount paid to the beneficiaries under the Agreement for the implementation of the Action.

#### **II.28.7 - Correction of systemic or recurrent errors, Irregularities, Fraud or breach of obligations**

**II.28.7.1** EDA 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.28.1.

The extension of findings may lead to:

- (a) the rejection of costs as ineligible;
- (b) reduction of the grant in accordance with Article II.26.4;
- (c) recovery of undue amounts in accordance with Article II.27;
- (d) suspension of payments in accordance with Article II.25.1;
- (e) suspension of the Action implementation in accordance with Article II.17.2;
- (f) termination in accordance with Article II.18.3.

**II.28.7.2** EDA 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 EDA 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:
  - would consider that the submission of revised financial statements is not possible or practicable or
  - would not submit revised financial statements.

**Step 2** - The beneficiary concerned has 60 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 EDA in justified cases.

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

If the beneficiary proposes an alternative correction method and EDA accepts it, EDA 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, EDA 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 EDA 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 EDA 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 calendar days from receiving the Formal notification to submit observations or to propose a duly substantiated alternative flat-rate.

**Step 3** - If EDA 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 EDA 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.28.8 - Checks and inspections by OLAF**

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

By virtue of Council Regulation No 2185/96<sup>8</sup> and Regulation No 883/2013<sup>9</sup> OLAF may also carry out 'on-the-spot' checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against Fraud and other Irregularities.

Where appropriate, OLAF findings may lead to recovery by EDA in accordance with Article II.27.

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

#### **II.28.9 - Checks and audits by the European Court of Auditors**

The European Court of Auditors has the same rights as EDA, notably right of access, for the purpose of checks and audits.

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<sup>8</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 (OJ L 292, 15.11.1996, p.2).

<sup>9</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) (OJ L 248,18.9.2013,p.1).

**ANNEX III  
ESTIMATED BUDGET OF THE ACTION**

[insert estimated budget of the Action]

## ANNEX IV MANDATE

I, the undersigned,

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

representing,

[full official name of the beneficiary]

[official legal status]

[full official address],

(‘the Beneficiary’),

for the purposes of signature and implementation of the Grant Agreement [Title & No] (‘the Agreement’) with the European Defence Agency (hereinafter also ‘EDA’) for the Action entitled [insert reference of the Action] (‘the Action’)

hereby:

### 1. Mandate

[full official name of the consortium leader] [ACRONYM]

[official legal status]

[full official address],

represented by [name, surname and function of the legal representative of the consortium leader] (‘the Consortium leader’)

to sign in my name and on my behalf the Grant Agreement and its possible subsequent amendments with the EDA.

### 2. Mandate the consortium leader 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 consortium leader and the other beneficiaries. In particular, I acknowledge that, by virtue of this mandate, the consortium leader alone is entitled to receive funds from EDA 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 Consortium leader fulfil its obligations under the Grant Agreement, and in particular, to provide to the Consortium leader, 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 Consortium leader 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

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

[signature]

Done at [place], [date]

In duplicate in English

**ANNEX V  
MODEL TECHNICAL REPORT**

# **Technical Report (Interim/Final)**

[model to be used for both with necessary adaptations]

|                    |  |
|--------------------|--|
| Project Number     |  |
| Project Acronym:   |  |
| Project Full Name: |  |

## 1 – General Information

### Project

---

|                       |                      |
|-----------------------|----------------------|
| Grant agreement N°    | <input type="text"/> |
| Project acronym       | <input type="text"/> |
| Project title         | <input type="text"/> |
| Funding scheme        | <input type="text"/> |
| Project starting date | <input type="text"/> |
| Project duration      | <input type="text"/> |
| Project website       | <input type="text"/> |

Consortium leader's name

Consortium organisation

### Report Period

---

Period covered from  to

Date of Submission

Version

Name of expert(s) drafting the report

## 2 – Overall Assessment

### Executive Summary

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*(1500 words max.)*

*Comments, in particular highlighting*

- *the scientific/technical achievements of the project*
- *its contribution to the State of the Art and*
- *its impact:*

### Overall recommendations

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*(1500 words max.)*

*(e.g. on overall modifications, corrective actions at WP level, or re-tuning the objectives to optimise the impact or keep up with the State of the Art, or for other reasons, like best use of resources, re-focusing...)*

### 3 – Objectives and Work plan

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|   |
|---|
| <p><b>I. Progress towards project objectives:</b></p> <p>Have the objectives for the period been achieved? In particular, has the project as a whole been making satisfactory progress in relation to the Description of Work (Annex I to the Grant Agreement)?</p> |
| <p><b>Comments:</b></p>   |

|  |
|--|
| <p><b>II. Progress in individual work packages:</b></p> <p>Has each work package (WP) been making satisfactory progress in relation to the Description of Work (Annex I of the Grant Agreement)?</p> |
| <p><b>Comments:</b></p>  |

|   |
|---|
| <p><b>III. Milestones and Deliverables:</b></p> <p>Have planned milestones and deliverables been achieved for the reporting period?</p> |
|---|





|  |
|--|
| <b>II. Deviations:</b><br>If applicable, please comment on large deviations with respect to the planned resources. |
| <b>Comments:</b>   |

## 5 – Implementation of the Project

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|   |
|---|
| <b>I. Management:</b><br>Has the project management been performed as required? |
| <b>Comments:</b>  |

|  |
|--|
| <b>II. Collaboration between beneficiaries:</b><br>Has the collaboration between the beneficiaries been effective? |
| <b>Comments:</b>   |

|  |
|--|
| <b>III. Beneficiaries' roles:</b><br>Do you identify evidence of underperforming beneficiaries, lack of commitment or change of interest of any beneficiaries? |
| <b>Comments:</b>   |

## 6 – Use of Foreground

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|  |
|--|
| <b>I. Impact:</b><br>Is there evidence that the project has/will produce significant scientific, technical and defence- related impacts? |
| <b>Comments:</b>   |

|  |
|--|
| <b>II. Use of results:</b><br>Is the plan for the use of foreground, including any update, appropriate?<br>Please comment on the plan for the exploitation and use of foreground for the consortium as a whole, or for individual beneficiary or groups of beneficiaries and its progress to date. |
|--|

|   |
|---|
| <p><b>Comments:</b></p>   |
| <p><b>III. Links with other projects and/or programmes:</b></p> <p>Is the consortium interacting with other related projects or other Research and Development national/international programmes, standardisation bodies?</p> |
| <p><b>Comments:</b></p>   |

## 7 – Classification of Information

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|  |
|--|
| <p>Have classification issues been properly handled (if applicable)?</p> |
| <p><b>Comments:</b></p>  |



**ANNEX VI  
MODEL FINANCIAL STATEMENT**

**FINANCIAL STATEMENT FOR *BENEFICIARY* [name] FOR REPORTING PERIOD [reporting period]**

| Eligible costs (per budget category) (1)   |  |   |         |   |                                   |                               |        |   |                    |               |               |                              | Receipts                                     | EU contribution                      |                             |                           |   |   |  |  |  |  |
|--|--|---|---------|---|-----------------------------------|-------------------------------|--------|---|--------------------|---------------|---------------|------------------------------|--|--------------------------------------|-----------------------------|---------------------------|---|---|--|--|--|--|
| A. Direct personnel costs  |  |   |         | B. Direct costs of subcontracting   | [C. Direct costs of fin. support] | D. Other direct costs         |        | E. Indirect costs (2)                                     | [F. Costs of ... ] |               |               | Total costs                  | Receipts                                     | Reimbursement rate %                 | Maximum EU contribution (3) | Requested EU contribution |   |   |  |  |  |  |
| A.1 Employees (or equivalent)  |  | A.2 Natural persons under direct contract |         | A.3 Seconded persons<br>[A.6 Personnel for providing access to research infrastructure] |                                   | A.4 SME owners without salary |        | A.5 Beneficiaries that are natural persons without salary |                    | D.1 Travel    | D.2 Equipment | D.3 Other goods and services | [D.4 Costs of large research infrastructure] | [F.1 Costs of ...]                   |                             | [F.1 Costs of ...]        |   | Receipts of the action, to be reported in the last reporting period, according to Article II.26.3 |  |  |  |  |
| Form of costs  |  | Actual                                    | Unit    | Unit  |                                   | Actual                        | Actual | Actual  | Actual             | Flat-rate (4) | Unit          | Unit                         |  |                                      |                             |                           |   |   |  |  |  |  |
|  |  | a   | Total b | No hours  | Total c                           | d                             | [e]    | f   | [g]                | 25%           | No units      | Total [i1]                   | Total [i2]                                   | j = a+b+c+d+[e] *f + [g] *h+[i1] *i2 | k                           | l                         | m | n   |  |  |  |  |
| [short name beneficiary]   |  |   |         |   |                                   |                               |        |   |                    |               |               |                              |  |                                      |                             |                           |   |   |  |  |  |  |
| Additional information   |  |   |         |   |                                   |                               |        |   |                    |               |               |                              |  |                                      |                             |                           |   |   |  |  |  |  |
| Information for indirect costs : Costs of in-kind contributions not used on premises o |  |   |         |   |                                   |                               |        |   |                    |               |               |                              |  |                                      |                             |                           |   |   |  |  |  |  |

**"The beneficiary hereby confirms that: The information provided is complete, reliable and true. The costs declared are eligible (see Article II.20).**

**The costs can be substantiated by adequate records and supporting documentation that will be produced upon request or in the context of checks, reviews, audits and investigations (see Articles II.28). For the last reporting period: that all the receipts have been declared (see Article II.26.3)."**

Please declare all eligible costs, even if they exceed the amounts indicated in the estimated budget (see Annex III). Only amounts that were declared in your individual financial statements can be taken into account later on, in order to replace other costs that are found to be ineligible.

- (1) See Article II.20 for the eligibility conditions
- (2) The indirect costs claimed must be free of any amounts covered by an operating grant (received under any EU funding programme). If you have received an operating grant during this reporting period, you cannot claim any indirect costs.
- (3) This is the theoretical amount of EU contribution that the system calculates automatically (by multiplying the reimbursement rate by the total costs declared). The amount you request (in the column 'requested EU contribution') may have to be less.
- (4) Flat rate : 25% of eligible direct costs, from which are excluded: direct costs of subcontracting, costs of in-kind contributions not used on premises, direct costs of financial support, and unit costs declared under budget category F if they include indirect costs (see Article I.3.2)
- (5) Only specific unit costs that do not include indirect costs

**ANNEX VII  
MODEL TERMS OF REFERENCE  
FOR THE CERTIFICATE ON THE FINANCIAL STATEMENTS**

**TERMS OF REFERENCE FOR AN INDEPENDENT REPORT OF  
FACTUAL FINDINGS ON COSTS CLAIMED  
UNDER THE GRANT AGREEMENT FOR THE PILOT PROJECT ON  
DEFENCE RESEARCH**

**and**

**INDEPENDENT REPORT OF FACTUAL FINDINGS ON  
COSTS CLAIMED  
UNDER THE GRANT AGREEMENT FOR THE PILOT PROJECT ON  
DEFENCE RESEARCH**

[The Terms of Reference should be completed by the Beneficiary and be agreed with the Auditor  
The Independent Report of Factual Findings should be provided by the Auditor]

## **Terms of Reference for an Independent Report of Factual Findings on costs claimed under the Grant Agreement for the Pilot Project on Defence Research**

This document sets out the ‘**Terms of Reference (ToR)**’ under which

[OPTION 1: *[insert name of the beneficiary]* (*‘the Beneficiary’*)]

agrees to engage

[*insert legal name of the auditor*] (*‘the Auditor’*)

to produce an independent report of factual findings (*‘the Report’*) concerning the Financial Statement(s) drawn up by the [Beneficiary] for Grant Agreement [insert number of the grant agreement, title of the action, acronym and duration from/to] (*‘the Agreement’*), and

to issue a Certificate on the Financial Statements’ (*‘CFS’*) referred to in Article I.4.5(d) of the Agreement based on the compulsory reporting template stipulated by the Commission.

The Agreement has been concluded between the Beneficiary and the European Defence Agency (*‘the Agency’*), under the powers delegated by the European Commission (*‘the Commission’*).

The Agency is mentioned as a signatory of the Agreement with the Beneficiary only. The European Union is not a party to this engagement.

### **1.1 Subject of the engagement**

The coordinator must submit to the Agency the final report within 60 days following the end of the last reporting period which should include, amongst other documents, a CFS for each beneficiary and for each linked third party that requests a total contribution of EUR [...] or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices. The CFS must cover all reporting periods of the beneficiary or linked third party indicated above.

The Beneficiary must submit to the coordinator the CFS for itself, if the CFS must be included in the final report according to Article I.4.5 of the Agreement.

The CFS is composed of two separate documents:

- The Terms of Reference (*‘the ToR’*) to be signed by the Beneficiary and the Auditor;
- The Auditor’s Independent Report of Factual Findings (*‘the Report’*) to be issued on the Auditor’s letterhead, dated, stamped and signed by the Auditor (or the competent public officer) which includes the agreed-upon procedures (*‘the Procedures’*) to be performed by the Auditor, and the standard factual findings (*‘the Findings’*) to be confirmed by the Auditor.

If the CFS must be included in the final report according to Article I.4.5 of the Agreement, the request for payment of the balance relating to the Agreement cannot be made without the CFS. However, the payment for reimbursement of costs covered by the CFS does not preclude the Agency, the European Anti-Fraud Office and the European Court of Auditors from carrying out checks, reviews, audits and investigations in accordance with Article II.28 of the Agreement.

### **1.2 Responsibilities**

#### **1.2.1 The Beneficiary :**

- (a) must draw up the Financial Statement(s) for the action financed by the Agreement in compliance with the obligations under the Agreement. The Financial Statement(s) must be drawn up according to the Beneficiary's accounting and book-keeping system and the underlying accounts and records;
- (b) must send the Financial Statement(s) to the Auditor;
- (c) is responsible and liable for the accuracy of the Financial Statement(s);
- (d) is responsible for the completeness and accuracy of the information provided to enable the Auditor to carry out the Procedures. It must provide the Auditor with a written representation letter supporting these statements. The written representation letter must state the period covered by the statements and must be dated;
- (e) accepts that the Auditor cannot carry out the Procedures unless it is given full access to the Beneficiary's staff and accounting as well as any other relevant records and documentation.

### 1.2.2 The Auditor:

- (a) is qualified to carry out statutory audits of accounting documents in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC or similar national regulations.

*[Option if the Beneficiary or Linked Third Party is an international organisation: is an [internal] [external] auditor in accordance with the internal financial regulations and procedures of the international organisation].*

- (b) must be independent from the Beneficiary, in particular, it must not have been involved in preparing the Beneficiary's Financial Statement(s);
- (c) must plan work so that the Procedures may be carried out and the Findings may be assessed;
- (d) must adhere to the Procedures laid down and the compulsory report format;
- (e) must carry out the engagement in accordance with this ToR;
- (f) must document matters which are important to support the Report;
- (g) must base its Report on the evidence gathered;
- (h) must submit the Report to the Beneficiary.

The Agency sets out the procedures to be carried out by the Auditor. The Auditor is not responsible for their suitability or pertinence. As this engagement is not an assurance engagement, the Auditor does not provide an audit opinion or a statement of assurance.

### 1.3 Applicable Standards

The Auditor must comply with these Terms of Reference and with:

- the International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as issued by the International Auditing and Assurance Standards Board (IAASB);
- the *Code of Ethics for Professional Accountants* issued by the International Ethics Standards Board for Accountants (IESBA). Although ISRS 4400 states that independence is not a requirement for engagements to carry out agreed-upon



procedures, the Agency requires that the Auditor also complies with the Code's independence requirements.

The Auditor's Report must state that there is no conflict of interests in establishing this Report between the Auditor and the Beneficiary, and must specify - if the service is invoiced - the total fee paid to the Auditor for providing the Report.

#### 1.4 Reporting

The Report must be written in English.

Under Article II.28 of the Agreement, the Agency, the European Anti-Fraud Office and the Court of Auditors have the right to audit any work that is carried out under the action and for which costs are declared from the European Union budget. This includes work related to this engagement.

The Auditor must provide access to all working papers (e.g. recalculation of hourly rates, verification of the time declared for the action) related to this assignment if the Agency, the European Anti-Fraud Office or the European Court of Auditors requests them.

#### 1.5 Timing

The Report must be provided by [dd Month yyyy].

#### 1.6 Other terms

*[The Beneficiary and the Auditor can use this section to agree other specific terms, such as the Auditor's fees, liability, applicable law, etc. Those specific terms must not contradict the terms specified above.]*

[legal name of the Auditor]

[legal name of the Beneficiary]

[name & function of authorised representative]

[name & function of authorised representative]

[dd Month yyyy]

[dd Month yyyy]

Signature of the Auditor

Signature of the Beneficiary

**Independent Report of Factual Findings on costs declared  
under Grant Agreement for the Pilot Project on Defence Research**

*(To be printed on the Auditor's letterhead)*

To

[ name of contact person(s)], [Position]

[ [Beneficiary's] [Linked Third Party's] name ]

[ Address]

[ dd Month yyyy]

Dear [Name of contact person(s)],

As agreed under the terms of reference dated [dd Month yyyy]

with [insert name of the beneficiary] ('the Beneficiary')

we

[name of the auditor] ('the Auditor'),

established at

[full address/city/state/province/country],

represented by

[name and function of an authorised representative],

have carried out the procedures agreed with you regarding the costs declared in the Financial Statement(s)<sup>10</sup> of the Beneficiary concerning the grant agreement

[insert grant agreement reference: number, title of the action and acronym] ('the Agreement'),

with a total cost declared of

[total amount] EUR,

---

<sup>10</sup> By which the Beneficiary declares costs under the Agreement (see template 'Model Financial Statement' in Annex VI to the Agreement).

and a total of actual costs and 'direct personnel costs declared as unit costs calculated in accordance with the Beneficiary usual cost accounting practices' declared of

[sum of total actual costs and total direct personnel costs declared as unit costs calculated in accordance with the Beneficiary usual cost accounting practices] EUR

and **hereby provide our Independent Report of Factual Findings ('the Report')** using the compulsory report format agreed with you.

### **The Report**

Our engagement was carried out in accordance with the terms of reference ('the ToR') appended to this Report. The Report includes the agreed-upon procedures ('the Procedures') carried out and the standard factual findings ('the Findings') examined.

The Procedures were carried out solely to assist the Agency in evaluating whether the Beneficiary's costs in the accompanying Financial Statement(s) were declared in accordance with the Agreement. The Agency draws its own conclusions from the Report and any additional information it may require.

The scope of the Procedures was defined by the Commission. Therefore, the Auditor is not responsible for their suitability or pertinence. Since the Procedures carried out constitute neither an audit nor a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, the Auditor does not give a statement of assurance on the Financial Statements.

Had the Auditor carried out additional procedures or an audit of the Beneficiary's Financial Statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to its attention and would have been included in the Report.

### **Not applicable Findings**

We examined the Financial Statement(s) stated above and considered the following Findings not applicable:

#### *Explanation (to be removed from the Report):*

*If a Finding was not applicable, it must be marked as 'N.A.' ('Not applicable') in the corresponding row on the right-hand column of the table and means that the Finding did not have to be corroborated by the Auditor and the related Procedure(s) did not have to be carried out.*

*The reasons of the non-application of a certain Finding must be obvious i.e.*

- i) if no cost was declared under a certain category then the related Finding(s) and Procedure(s) are not applicable;*
- ii) if the condition set to apply certain Procedure(s) are not met the related Finding(s) and those Procedure(s) are not applicable. For instance, for 'beneficiaries with accounts established in a currency other than euro' the Procedure and Finding related to 'beneficiaries with accounts established in euro' are not applicable. Similarly, if no additional remuneration is paid, the related Finding(s) and Procedure(s) for additional remuneration are not applicable.*

List here all Findings considered not applicable for the present engagement and explain the reasons of the non-applicability.

....

### Exceptions

Apart from the exceptions listed below, the [Beneficiary] [Linked Third Party] provided the Auditor all the documentation and accounting information needed by the Auditor to carry out the requested Procedures and evaluate the Findings.

*Explanation (to be removed from the Report):*

- *If the Auditor was not able to successfully complete a procedure requested, it must be marked as 'E' ('Exception') in the corresponding row on the right-hand column of the table. The reason such as the inability to reconcile key information or the unavailability of data that prevents the Auditor from carrying out the Procedure must be indicated below.*
- *If the Auditor cannot corroborate a standard finding after having carried out the corresponding procedure, it must also be marked as 'E' ('Exception') and, where possible, the reasons why the Finding was not fulfilled and its possible impact must be explained here below.*

List here any exceptions and add any information on the cause and possible consequences of each exception, if known. If the exception is quantifiable, include the corresponding amount.

....

*Example (to be removed from the Report):*

1. *The Beneficiary was unable to substantiate the Finding number 1 on ... because ....*
2. *Finding number 30 was not fulfilled because the methodology used by the Beneficiary to calculate unit costs was different from the one approved by the Commission. The differences were as follows: ...*
3. *After carrying out the agreed procedures to confirm the Finding number 31, the Auditor found a difference of \_\_\_\_\_ EUR. The difference can be explained by ...*

### Further Remarks

In addition to reporting on the results of the specific procedures carried out, the Auditor would like to make the following general remarks:

*Example (to be removed from the Report):*

1. *Regarding Finding number 8 the conditions for additional remuneration were considered as fulfilled because ...*
2. *In order to be able to confirm the Finding number 15 we carried out the following additional procedures: ....*

**Use of this Report**

This Report may be used only for the purpose described in the above objective. It was prepared solely for the confidential use of the Beneficiary and the Agency. The Report may not be used by the Beneficiary or by the Agency for any other purpose, nor may it be distributed to any other parties. The Agency may only disclose the Report to authorised parties, in particular to the European Anti-Fraud Office (OLAF) and the European Court of Auditors.

This Report relates only to the Financial Statement(s) submitted to the Agency by the Beneficiary for the Agreement. Therefore, it does not extend to any other of the Beneficiary's Financial Statement(s).

There was no conflict of interest<sup>11</sup> between the Auditor and the Beneficiary in establishing this Report. The total fee paid to the Auditor for providing the Report was EUR [ ] (including EUR [ ] of deductible VAT).

We look forward to discussing our Report with you and would be pleased to provide any further information or assistance.

[legal name of the Auditor]

[name and function of an authorised representative]

[dd Month yyyy]

Signature of the Auditor

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<sup>11</sup> A conflict of interest arises when the Auditor's objectivity to establish the certificate is compromised in fact or in appearance when the Auditor for instance:

- was involved in the preparation of the Financial Statements;
- stands to benefit directly should the certificate be accepted;
- has a close relationship with any person representing the beneficiary;
- is a director, trustee or partner of the beneficiary; or
- is in any other situation that compromises his or her independence or ability to establish the certificate impartially.

**Agreed-upon procedures to be performed and standard factual findings to be confirmed by the Auditor**

The procedures carried out by the auditor to confirm the standard factual finding are listed in the table below.

The ‘result’ column has three different options: ‘C’, ‘E’ and ‘N.A.’:

- ‘C’ stands for ‘confirmed’ and means that the auditor can confirm the ‘standard factual finding’ and, therefore, there is no exception to be reported.
- ‘E’ stands for ‘exception’ and means that the Auditor carried out the procedures but cannot confirm the ‘standard factual finding’, or that the Auditor was not able to carry out a specific procedure (e.g. because it was impossible to reconcile key information or data were unavailable),
- ‘N.A.’ stands for ‘not applicable’ and means that the Finding did not have to be examined by the Auditor and the related Procedure(s) did not have to be carried out. The reasons of the non-application of a certain Finding must be obvious i.e. i) if no cost was declared under a certain category then the related Finding(s) and Procedure(s) are not applicable; ii) if the condition set to apply certain Procedure(s) are not met then the related Finding(s) and Procedure(s) are not applicable. For instance, for ‘beneficiaries with accounts established in a currency other than the euro’ the Procedure related to ‘beneficiaries with accounts established in euro’ is not applicable. Similarly, if no additional remuneration is paid, the related Finding(s) and Procedure(s) for additional remuneration are not applicable.

| Ref | Procedures   | Standard factual finding | Result<br>(C / E / N.A.) |
|-----|--|--------------------------|--------------------------|
| A   | <b>ACTUAL PERSONNEL COSTS AND UNIT COSTS CALCULATED BY THE BENEFICIARY IN ACCORDANCE WITH ITS USUAL COST ACCOUNTING PRACTICE</b>   |                          |                          |
|     | <p>The Auditor draws a sample of persons whose costs were declared in the Financial Statement(s) to carry out the procedures indicated in the consecutive points of this section A.</p> <p><i>(The sample should be selected randomly so that it is representative. Full coverage is required if there are fewer than 10 people (including employees, natural persons working under a direct contract and personnel seconded by a third party), otherwise the sample should have a minimum of 10 people, or 10% of the total, whichever number is the highest)</i></p> <p>The Auditor sampled <input type="text"/> people out of the total of <input type="text"/> people.</p> |                          |                          |

| Ref   | Procedures | Standard factual finding  | Result<br>(C / E / N.A.) |
|---|------------|---|--------------------------|
| <p><b>A.1</b></p> <p><b>PERSONNEL COSTS</b></p> <p><u>For the persons included in the sample and working under an employment contract or equivalent act (general procedures for individual actual personnel costs and personnel costs declared as unit costs)</u></p> <p>To confirm standard factual findings 1-5 listed in the next column, the Auditor reviewed following information/documents provided by the Beneficiary:</p> <ul style="list-style-type: none"> <li>○ a list of the persons included in the sample indicating the period(s) during which they worked for the action, their position (classification or category) and type of contract;</li> <li>○ the payslips of the employees included in the sample;</li> <li>○ reconciliation of the personnel costs declared in the Financial Statement(s) with the accounting system (project accounting and general ledger) and payroll system;</li> <li>○ information concerning the employment status and employment conditions of personnel included in the sample, in particular their employment contracts or equivalent;</li> <li>○ the Beneficiary’s usual policy regarding payroll matters (e.g. salary policy, overtime policy, variable pay);</li> <li>○ applicable national law on taxes, labour and social security and</li> <li>○ any other document that supports the personnel costs declared.</li> </ul> <p>The Auditor also verified the eligibility of all components of the retribution (see Article II.19 GA) and recalculated the personnel costs for employees included in the sample.</p> |            | <p>1) The employees were i) directly hired by the Beneficiary in accordance with its national legislation, ii) under the Beneficiary’s sole technical supervision and responsibility and iii) remunerated in accordance with the Beneficiary’s usual practices.</p> |                          |
|   |            | <p>2) Personnel costs were recorded in the Beneficiary’s accounts/payroll system.</p>   |                          |
|   |            | <p>3) Costs were adequately supported and reconciled with the accounts and payroll records.</p>   |                          |
|   |            | <p>4) Personnel costs did not contain any ineligible elements.</p>  |                          |
|   |            | <p>5) There were no discrepancies between the personnel costs charged to the action and the costs recalculated by the Auditor.</p>  |                          |

| Ref | Procedures   | Standard factual finding   | Result<br>(C / E / N.A.) |
|-----|--|--|--------------------------|
|     | <p><i>Further procedures if 'additional remuneration' is paid</i></p> <p>To confirm standard factual findings 6-9 listed in the next column, the Auditor:</p> <ul style="list-style-type: none"> <li>○ reviewed relevant documents provided by the Beneficiary (legal form, legal/statutory obligations, the Beneficiary's usual policy on additional remuneration, criteria used for its calculation...);</li> <li>○ recalculated the amount of additional remuneration eligible for the action based on the supporting documents received (full-time or part-time work, exclusive or non-exclusive dedication to the action, etc.) to arrive at the applicable FTE/year and pro-rata rate (see data collected in the course of carrying out the procedures under A.2 'Productive hours' and A.4 'Time recording system').</li> </ul> <p><i>IF ANY PART OF THE REMUNERATION PAID TO THE EMPLOYEE IS NOT MANDATORY ACCORDING TO THE NATIONAL LAW OR THE EMPLOYMENT CONTRACT ("ADDITIONAL REMUNERATION") AND IS ELIGIBLE UNDER THE PROVISIONS OF ARTICLE II.20, THIS CAN BE CHARGED AS ELIGIBLE COST TO THE ACTION UP TO THE FOLLOWING AMOUNT:</i></p> <p><i>(A) IF THE PERSON WORKS FULL TIME AND EXCLUSIVELY ON THE ACTION DURING THE FULL YEAR: UP TO EUR 8 000/YEAR;</i></p> <p><i>(B) IF THE PERSON WORKS EXCLUSIVELY ON THE ACTION BUT NOT FULL-TIME OR NOT FOR THE FULL YEAR: UP TO THE CORRESPONDING PRO-RATA AMOUNT OF EUR 8 000, OR</i></p> <p><i>(C) IF THE PERSON DOES NOT WORK EXCLUSIVELY ON THE ACTION: UP TO A PRO-RATA AMOUNT CALCULATED IN ACCORDANCE TO ARTICLE II.20.</i></p> | <p>6) The Beneficiary paying "additional remuneration" was a non-profit legal entity.</p> <p>7) The amount of additional remuneration paid corresponded to the Beneficiary's usual remuneration practices and was consistently paid whenever the same kind of work or expertise was required.</p> <p>8) The criteria used to calculate the additional remuneration were objective and generally applied by the Beneficiary regardless of the source of funding used.</p> <p>9) The amount of additional remuneration included in the personnel costs charged to the action was capped at EUR 8,000 per FTE/year (up to the equivalent pro-rata amount if the person did not work on the action full-time during the year</p> |                          |



| Ref | Procedures   | Standard factual finding  | Result<br>(C / E / N.A.) |
|-----|--|---|--------------------------|
|     | <p><i>Additional procedures in case “unit costs calculated by the Beneficiary in accordance with its usual cost accounting practices” is applied:</i></p> <p>Apart from carrying out the procedures indicated above to confirm standard factual findings 1-5 and, if applicable, also 6-9, the Auditor carried out following procedures to confirm standard factual findings 10-13 listed in the next column:</p> <ul style="list-style-type: none"> <li>○ obtained a description of the Beneficiary's usual cost accounting practice to calculate unit costs;</li> <li>○ reviewed whether the Beneficiary's usual cost accounting practice was applied for the Financial Statements subject of the present CFS;</li> <li>○ verified the employees included in the sample were charged under the correct category (in accordance with the criteria used by the Beneficiary to establish personnel categories) by reviewing the contract/HR-record or analytical accounting records;</li> <li>○ verified that there is no difference between the total amount of personnel costs used in calculating the cost per unit and the total amount of personnel costs recorded in the statutory accounts;</li> <li>○ verified whether actual personnel costs were adjusted on the basis of budgeted or estimated elements and, if so, verified whether those elements used are actually relevant for the calculation, objective and supported by documents.</li> </ul> <p><u>For natural persons included in the sample and working with the Beneficiary under a direct contract other than an employment contract, such as consultants (no subcontractors).</u></p> | <p>or did not work exclusively on the action).</p> <p>10) The personnel costs included in the Financial Statement were calculated in accordance with the Beneficiary's usual cost accounting practice. This methodology was consistently used in all H2020 actions.</p> <p>11) The employees were charged under the correct category.</p> <p>12) Total personnel costs used in calculating the unit costs were consistent with the expenses recorded in the statutory accounts.</p> <p>13) Any estimated or budgeted element used by the Beneficiary in its unit-cost calculation were relevant for calculating personnel costs and corresponded to objective and verifiable information.</p> <p>14) The natural persons reported to the Beneficiary (worked under the Beneficiary's instructions).</p> |                          |

| Ref | Procedures  | Standard factual finding  | Result<br>(C / E / N.A.) |
|-----|---|---|--------------------------|
|     | <p>To confirm standard factual findings 14-18 listed in the next column the Auditor reviewed following information/documents provided by the Beneficiary:</p> <ul style="list-style-type: none"> <li>○ the contracts, especially the cost, contract duration, work description, place of work, ownership of the results and reporting obligations to the Beneficiary;</li> <li>○ the employment conditions of staff in the same category to compare costs and;</li> <li>○ any other document that supports the costs declared and its registration (e.g. invoices, accounting records, etc.).</li> </ul>  | <p>15) They worked on the Beneficiary’s premises (unless otherwise agreed with the Beneficiary).</p>  |                          |
|     |   | <p>16) The results of work carried out belong to the Beneficiary.</p>   |                          |
|     |   | <p>17) Their costs were not significantly different from those for staff who performed similar tasks under an employment contract with the Beneficiary.</p>         |                          |
|     |   | <p>18) The costs were supported by audit evidence and registered in the accounts.</p>   |                          |
|     | <p><u>For personnel seconded by a third party and included in the sample (not subcontractors)</u></p> <p>To confirm standard factual findings 19-22 listed in the next column, the Auditor reviewed following information/documents provided by the Beneficiary:</p> <ul style="list-style-type: none"> <li>○ their secondment contract(s) notably regarding costs, duration, work description, place of work and ownership of the results;</li> <li>○ if there is reimbursement by the Beneficiary to the third party for the resource made available (in-kind contribution against payment): any documentation that supports the costs declared (e.g. contract, invoice, bank payment, and proof of registration in its accounting/payroll, etc.) and reconciliation of the Financial Statement(s) with the accounting system (project accounting and general ledger) as well as any proof that the amount invoiced by the third party did not include any profit;</li> </ul> | <p>19) Seconded personnel reported to the Beneficiary and worked on the Beneficiary’s premises (unless otherwise agreed with the Beneficiary).</p>                  |                          |
|     |   | <p>20) The results of work carried out belong to the Beneficiary.</p>   |                          |
|     |   | <p><i>If personnel is seconded against payment:</i></p> <p>21) The costs declared were supported with documentation and recorded in the Beneficiary’s accounts.</p> |                          |

| Ref        | Procedures   | Standard factual finding  | Result<br>(C / E / N.A.) |
|------------|--|---|--------------------------|
|            | <ul style="list-style-type: none"> <li>○ if there is no reimbursement by the Beneficiary to the third party for the resource made available (in-kind contribution free of charge): a proof of the actual cost borne by the Third Party for the resource made available free of charge to the Beneficiary such as a statement of costs incurred by the Third Party and proof of the registration in the Third Party's accounting/payroll;</li> <li>○ any other document that supports the costs declared (e.g. invoices, etc.).</li> </ul>  | <p>The third party did not include any profit.</p> <p><i>If personnel is seconded free of charge:</i></p> <p>22) The costs declared did not exceed the third party's cost as recorded in the accounts of the third party and were supported with documentation.</p>   |                          |
| <b>A.2</b> | <p><b>PRODUCTIVE HOURS</b></p> <p>To confirm standard factual findings 23-28 listed in the next column, the Auditor reviewed relevant documents, especially national legislation, labour agreements and contracts and time records of the persons included in the sample, to verify that:</p> <ul style="list-style-type: none"> <li>○ the annual productive hours applied were calculated in accordance with one of the methods described below,</li> <li>○ the full-time equivalent (FTEs) ratios for employees not working full-time were correctly calculated.</li> </ul> <p>If the Beneficiary applied method B, the auditor verified that the correctness in which the total number of hours worked was calculated and that the contracts specified the annual workable hours.</p> <p>If the Beneficiary applied method C, the auditor verified that the 'annual productive hours' applied when calculating the hourly rate were equivalent to at least 90 % of the 'standard annual workable hours'. The Auditor can only do this if the calculation of the standard annual</p> | <p>23) The Beneficiary applied method [<i>choose one option and delete the others</i>]</p> <p>[A: 1720 hours]</p> <p>[B: the 'total number of hours worked']</p> <p>[C: 'annual productive hours' used correspond to usual accounting practices]</p> <p>24) Productive hours were calculated annually.</p> <p>25) For employees not working full-time the full-time equivalent (FTE) ratio was correctly applied.</p> |                          |

| Ref               | Procedures   | Standard factual finding   | Result<br>(C / E / N.A.) |
|-------------------|--|--|--------------------------|
|                   | <p>workable hours can be supported by records, such as national legislation, labour agreements, and contracts.</p> <p><i>BENEFICIARY'S PRODUCTIVE HOURS' FOR PERSONS WORKING FULL TIME SHALL BE ONE OF THE FOLLOWING METHODS:</i></p> <p><b>A. 1720 ANNUAL PRODUCTIVE HOURS (PRO-RATA FOR PERSONS NOT WORKING FULL-TIME)</b></p> <p><b>B. THE TOTAL NUMBER OF HOURS WORKED BY THE PERSON FOR THE BENEFICIARY IN THE YEAR (THIS METHOD IS ALSO REFERRED TO AS 'TOTAL NUMBER OF HOURS WORKED' IN THE NEXT COLUMN). THE CALCULATION OF THE TOTAL NUMBER OF HOURS WORKED WAS DONE AS FOLLOWS: ANNUAL WORKABLE HOURS OF THE PERSON ACCORDING TO THE EMPLOYMENT CONTRACT, APPLICABLE LABOUR AGREEMENT OR NATIONAL LAW PLUS OVERTIME WORKED MINUS ABSENCES (SUCH AS SICK LEAVE OR SPECIAL LEAVE).</b></p> <p><b>C. THE STANDARD NUMBER OF ANNUAL HOURS GENERALLY APPLIED BY THE BENEFICIARY FOR ITS PERSONNEL IN ACCORDANCE WITH ITS USUAL COST ACCOUNTING PRACTICES (THIS METHOD IS ALSO REFERRED TO AS 'TOTAL ANNUAL PRODUCTIVE HOURS' IN THE NEXT COLUMN). THIS NUMBER MUST BE AT LEAST 90% OF THE STANDARD ANNUAL WORKABLE HOURS.</b></p> <p><i>'ANNUAL WORKABLE HOURS' MEANS THE PERIOD DURING WHICH THE PERSONNEL MUST BE WORKING, AT THE EMPLOYER'S DISPOSAL AND CARRYING OUT HIS/HER ACTIVITY OR DUTIES UNDER THE EMPLOYMENT CONTRACT, APPLICABLE COLLECTIVE LABOUR AGREEMENT OR NATIONAL WORKING TIME LEGISLATION.</i></p> | <p><i>If the Beneficiary applied method B.</i></p> <p>26) The calculation of the number of 'annual workable hours', overtime and absences was verifiable based on the documents provided by the Beneficiary.</p>               |                          |
|                   |  | <p><i>If the Beneficiary applied method C.</i></p> <p>27) The calculation of the number of 'standard annual workable hours' was verifiable based on the documents provided by the Beneficiary.</p>                             |                          |
|                   |  | <p>28) The 'annual productive hours' used for calculating the hourly rate were consistent with the usual cost accounting practices of the Beneficiary and were equivalent to at least 90 % of the 'annual workable hours'.</p> |                          |
| <p><b>A.3</b></p> | <p><b>HOURLY PERSONNEL RATES</b></p> <p><u>l) For unit costs calculated in accordance to the Beneficiary's usual cost accounting practice (unit costs):</u></p>  | <p>29) The Beneficiary applied [choose one option and delete the other]:</p> <p>[Option I: "Unit costs (hourly rates) were calculated in</p>   |                          |

| Ref | Procedures   | Standard factual finding  | Result<br>(C / E / N.A.) |
|-----|--|---|--------------------------|
|     | <p>If the Beneficiary has a "Certificate on Methodology to calculate unit costs " (CoMUC) approved by the Commission, the Beneficiary provides the Auditor with a description of the approved methodology and the Commission's letter of acceptance. The Auditor verified that the Beneficiary has indeed used the methodology approved. If so, no further verification is necessary.</p> <p>If the Beneficiary does not have a "Certificate on Methodology" (CoMUC) approved by the Commission, or if the methodology approved was not applied, then the Auditor:</p> <ul style="list-style-type: none"> <li>○ reviewed the documentation provided by the Beneficiary, including manuals and internal guidelines that explain how to calculate hourly rates;</li> <li>○ recalculated the unit costs (hourly rates) of staff included in the sample following the results of the procedures carried out in A.1 and A.2.</li> </ul> <p><u>II) For individual hourly rates:</u></p> <p>The Auditor:</p> <ul style="list-style-type: none"> <li>○ reviewed the documentation provided by the Beneficiary, including manuals and internal guidelines that explain how to calculate hourly rates;</li> <li>○ recalculated the hourly rates of staff included in the sample following the results of the procedures carried out in A.1 and A.2.</li> </ul> <p><u>"UNIT COSTS CALCULATED BY THE BENEFICIARY IN ACCORDANCE WITH ITS USUAL COST ACCOUNTING PRACTICES":</u><br/> <i>IT IS CALCULATED BY DIVIDING THE TOTAL AMOUNT OF PERSONNEL COSTS OF THE CATEGORY TO WHICH THE EMPLOYEE BELONGS VERIFIED IN LINE WITH PROCEDURE A.1 BY THE NUMBER OF FTE AND THE ANNUAL TOTAL PRODUCTIVE HOURS OF THE SAME CATEGORY CALCULATED BY THE BENEFICIARY IN ACCORDANCE WITH PROCEDURE A.2.</i></p> | <p>accordance with the Beneficiary's usual cost accounting practices"]<br/>                     [Option II: Individual hourly rates were applied]</p> <p><i>For option I concerning unit costs and if the Beneficiary applies the methodology approved by the Commission (CoMUC):</i></p> <p>30) The Beneficiary used the Commission-approved methodology to calculate hourly rates. It corresponded to the organisation's usual cost accounting practices and was applied consistently for all activities irrespective of the source of funding.</p> <p><i>For option I concerning unit costs and if the Beneficiary applies a methodology not approved by the Commission:</i></p> <p>31) The unit costs re-calculated by the Auditor were the same as the rates applied by the Beneficiary.</p> |                          |

| Ref               | Procedures  | Standard factual finding   | Result<br>(C / E / N.A.) |
|-------------------|---|--|--------------------------|
|                   | <p><i>HOURLY RATE FOR INDIVIDUAL ACTUAL PERSONAL COSTS:</i><br/> <i>IT IS CALCULATED BY DIVIDING THE TOTAL AMOUNT OF PERSONNEL COSTS OF AN EMPLOYEE VERIFIED IN LINE WITH PROCEDURE A.1 BY THE NUMBER OF ANNUAL PRODUCTIVE HOURS VERIFIED IN LINE WITH PROCEDURE A.2.</i></p>   | <p><i>For option II concerning individual hourly rates:</i><br/>                     32) The individual rates re-calculated by the Auditor were the same as the rates applied by the Beneficiary.</p>  |                          |
| <p><b>A.4</b></p> | <p><b>TIME RECORDING SYSTEM</b></p> <p>To verify that the time recording system ensures the fulfilment of all minimum requirements and that the hours declared for the action were correct, accurate and properly authorised and supported by documentation, the Auditor made the following checks for the persons included in the sample that declare time as worked for the action on the basis of time records:</p> <ul style="list-style-type: none"> <li>○ description of the time recording system provided by the Beneficiary (registration, authorisation, processing in the HR-system);</li> <li>○ its actual implementation;</li> <li>○ time records were signed at least monthly by the employees (on paper or electronically) and authorised by the project manager or another manager;</li> <li>○ the hours declared were worked within the project period;</li> <li>○ there were no hours declared as worked for the action if HR-records showed absence due to holidays or sickness (further cross-checks with travels are carried out in B.1 below) ;</li> <li>○ the hours charged to the action matched those in the time recording system.</li> </ul> | <p>33) All persons recorded their time dedicated to the action on a <b>daily/ weekly/ monthly</b> basis using a <b>paper/computer-based</b> system. <i>(delete the answers that are not applicable)</i></p> <p>34) Their time-records were authorised at least monthly by the project manager or other superior.</p> <p>35) Hours declared were worked within the project period and were consistent with the presences/absences recorded in HR-records.</p> |                          |

| Ref        | Procedures   | Standard factual finding  | Result<br>(C / E / N.A.) |
|------------|--|---|--------------------------|
|            | <p><i>ONLY THE HOURS WORKED ON THE ACTION CAN BE CHARGED. ALL WORKING TIME TO BE CHARGED SHOULD BE RECORDED THROUGHOUT THE DURATION OF THE PROJECT, ADEQUATELY SUPPORTED BY EVIDENCE OF THEIR REALITY AND RELIABILITY (SEE SPECIFIC PROVISIONS BELOW FOR PERSONS WORKING EXCLUSIVELY FOR THE ACTION WITHOUT TIME RECORDS).</i></p>   | 36) There were no discrepancies between the number of hours charged to the action and the number of hours recorded.   |                          |
|            | <p><u>If the persons are working exclusively for the action and without time records</u></p> <p>For the persons selected that worked exclusively for the action without time records, the Auditor verified evidence available demonstrating that they were in reality exclusively dedicated to the action and that the Beneficiary signed a declaration confirming that they have worked exclusively for the action.</p>   | 37) The exclusive dedication is supported by a declaration signed by the Beneficiary's and by any other evidence gathered.  |                          |
| <b>B</b>   | <b>COSTS OF SUBCONTRACTING</b>   |   |                          |
| <b>B.1</b> | <p><b>The Auditor obtained the detail/breakdown of subcontracting costs and sampled [redacted] cost items selected randomly</b> (<i>full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest</i>).</p> <p>To confirm standard factual findings 38-42 listed in the next column, the Auditor reviewed the following for the items included in the sample:</p> <ul style="list-style-type: none"> <li>○ the use of subcontractors was foreseen in Annex 1;</li> <li>○ subcontracting costs were declared in the subcontracting category of the Financial Statement;</li> <li>○ supporting documents on the selection and award procedure were followed;</li> <li>○ the Beneficiary ensured best value for money (key elements to appreciate the respect of this principle are the award of the subcontract to the bid offering best price-quality ratio, under conditions of transparency and equal treatment. In case an existing framework contract was used the Beneficiary ensured it was established on the basis</li> </ul> | 38) The use of claimed subcontracting costs was foreseen in Annex 1 and costs were declared in the Financial Statements under the subcontracting category.  |                          |
|            |  | 39) There were documents of requests to different providers, different offers and assessment of the offers before selection of the provider in line with internal procedures and procurement rules. Subcontracts were awarded in accordance with the principle of best value for money. |                          |

| Ref      | Procedures   | Standard factual finding  | Result<br>(C / E / N.A.) |
|----------|--|---|--------------------------|
|          | <p>of the principle of best value for money under conditions of transparency and equal treatment).</p> <p>In particular,</p> <ul style="list-style-type: none"> <li>i. if the Beneficiary acted as a contracting authority within the meaning of Directive 2004/18/EC or of Directive 2004/17/EC, the Auditor verified that the applicable national law on public procurement was followed and that the subcontracting complied with the Terms and Conditions of the Agreement.</li> <li>ii. if the Beneficiary did not fall under the above-mentioned category the Auditor verified that the Beneficiary followed their usual procurement rules and respected the Terms and Conditions of the Agreement..</li> </ul> <p>For the items included in the sample the Auditor also verified that:</p> <ul style="list-style-type: none"> <li>o the subcontracts were not awarded to other Beneficiaries in the consortium;</li> <li>o there were signed agreements between the Beneficiary and the subcontractor;</li> <li>o there was evidence that the services were provided by subcontractor;</li> </ul> | <p><i>(When different offers were not collected the Auditor explains the reasons provided by the Beneficiary under the caption "Exceptions" of the Report. The Commission will analyse this information to evaluate whether these costs might be accepted as eligible)</i></p> <p>40) The subcontracts were not awarded to other Beneficiaries of the consortium.</p> <p>41) All subcontracts were supported by signed agreements between the Beneficiary and the subcontractor.</p> <p>42) There was evidence that the services were provided by the subcontractors.</p> |                          |
| <b>C</b> | <b>COSTS OF PROVIDING FINANCIAL SUPPORT TO THIRD PARTIES</b>   |   |                          |
| C.1      | <p>The Auditor obtained the detail/breakdown of the costs of providing financial support to third parties and sampled <input type="text"/> cost items selected randomly <i>(full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest).</i></p>  | 43) All minimum conditions were met   |                          |



| Ref | Procedures  | Standard factual finding | Result<br>(C / E / N.A.) |
|-----|---|--------------------------|--------------------------|
|     | <p>The Auditor verified that the following minimum conditions were met:</p> <ul style="list-style-type: none"> <li>a) the maximum amount of financial support for each third party did not exceed EUR 60 000, unless explicitly mentioned in Annex 1;</li> <li>b) the financial support to third parties was agreed in Annex 1 of the Agreement and the other provisions on financial support to third parties included in Annex 1 were respected.</li> </ul> |                          |                          |

| D   | OTHER ACTUAL DIRECT COSTS  |  |  |
|-----|--|--|--|
| D.1 | <p><b>COSTS OF TRAVEL AND RELATED SUBSISTENCE ALLOWANCES</b></p> <p>The Auditor sampled [redacted] cost items selected randomly (full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is the highest).</p> <p>The Auditor inspected the sample and verified that:</p> <ul style="list-style-type: none"> <li>○ travel and subsistence costs were consistent with the Beneficiary's usual policy for travel. In this context, the Beneficiary provided evidence of its normal policy for travel costs (e.g. use of first class tickets, reimbursement by the Beneficiary on the basis of actual costs, a lump sum or per diem) to enable the Auditor to compare the travel costs charged with this policy;</li> <li>○ travel costs are correctly identified and allocated to the action (e.g. trips are directly linked to the action) by reviewing relevant supporting documents such as minutes of meetings, workshops or conferences, their registration in the correct project account, their consistency with time records or with the dates/duration of the workshop/conference;</li> <li>○ no ineligible costs or excessive or reckless expenditure was declared.</li> </ul> | 44) Costs were incurred, approved and reimbursed in line with the Beneficiary's usual policy for travels.  |  |
|     |  | 45) There was a link between the trip and the action.  |  |
|     |  | 46) The supporting documents were consistent with each other regarding subject of the trip, dates, duration and reconciled with time records and accounting. |  |
|     |  | 47) No ineligible costs or excessive or reckless expenditure was declared.   |  |
| D.2 | <p><b>DEPRECIATION COSTS FOR EQUIPMENT, INFRASTRUCTURE OR OTHER ASSETS</b></p> <p>The Auditor sampled [redacted] cost items selected randomly (full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is the highest).</p> <p>For “equipment, infrastructure or other assets” [from now on called “asset(s)”] selected in the sample the Auditor verified that:</p> <ul style="list-style-type: none"> <li>○ the assets were acquired in conformity with the Beneficiary's internal guidelines and procedures;</li> <li>○ they were correctly allocated to the action (with supporting documents such as delivery note invoice or any other proof demonstrating the link to the action)</li> </ul>   | 48) Procurement rules, principles and guides were followed.  |  |
|     |  | 49) There was a link between the grant agreement and the asset charged to the action.  |  |
|     |  | 50) The asset charged to the action was traceable to the accounting records and the underlying documents.  |  |

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|                   | <ul style="list-style-type: none"> <li>○ they were entered in the accounting system;</li> <li>○ the extent to which the assets were used for the action (as a percentage) was supported by reliable documentation (e.g. usage overview table);</li> </ul> <p>The Auditor recalculated the depreciation costs and verified that they were in line with the applicable rules in the Beneficiary’s country and with the Beneficiary’s usual accounting policy (e.g. depreciation calculated on the acquisition value).</p> <p>The Auditor verified that no ineligible costs such as deductible VAT, exchange rate losses, excessive or reckless expenditure were declared (see Article II.20.4 GA).</p>   | <p>51) The depreciation method used to charge the asset to the action was in line with the applicable rules of the Beneficiary's country and the Beneficiary's usual accounting policy.</p> |  |
|                   |  | <p>52) The amount charged corresponded to the actual usage for the action.</p>  |  |
|                   |  | <p>53) No ineligible costs or excessive or reckless expenditure were declared.</p>  |  |
| <p><b>D.3</b></p> | <p><b>COSTS OF OTHER GOODS AND SERVICES</b></p> <p><b>The Auditor sampled [REDACTED] cost items selected randomly</b> (<i>full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest</i>).</p> <p>For the purchase of goods, works or services included in the sample the Auditor verified that:</p> <ul style="list-style-type: none"> <li>○ the contracts did not cover tasks described in Annex 1;</li> <li>○ they were correctly identified, allocated to the proper action, entered in the accounting system (traceable to underlying documents such as purchase orders, invoices and accounting);</li> <li>○ the goods were not placed in the inventory of durable equipment;</li> <li>○ the costs charged to the action were accounted in line with the Beneficiary’s usual accounting practices;</li> <li>○ no ineligible costs or excessive or reckless expenditure were declared (see Article II.20.4 GA).</li> </ul> | <p>54) Contracts for works or services did not cover tasks described in Annex 1.</p>  |  |
|                   |  | <p>55) Costs were allocated to the correct action and the goods were not placed in the inventory of durable equipment.</p>  |  |
|                   |  | <p>56) The costs were charged in line with the Beneficiary’s accounting policy and were adequately supported.</p>   |  |
|                   |  | <p>57) No ineligible costs or excessive or reckless expenditure were declared. For internal invoices/charges only the cost element was</p>  |  |

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|                   | <p>In addition, the Auditor verified that these goods and services were acquired in conformity with the Beneficiary's internal guidelines and procedures, in particular:</p> <ul style="list-style-type: none"> <li>○ if Beneficiary acted as a contracting authority within the meaning of Directive 2004/18/EC or of Directive 2004/17/EC, the Auditor verified that the applicable national law on public procurement was followed and that the procurement contract complied with the Terms and Conditions of the Agreement.</li> <li>○ if the Beneficiary did not fall into the category above, the Auditor verified that the Beneficiary followed their usual procurement rules and respected the Terms and Conditions of the Agreement.</li> </ul> <p>For the items included in the sample the Auditor also verified that:</p> <ul style="list-style-type: none"> <li>○ the Beneficiary ensured best value for money (key elements to appreciate the respect of this principle are the award of the contract to the bid offering best price-quality ratio, under conditions of transparency and equal treatment. In case an existing framework contract was used the Auditor also verified that the Beneficiary ensured it was established on the basis of the principle of best value for money under conditions of transparency and equal treatment);</li> </ul> <p><i>SUCH GOODS AND SERVICES INCLUDE, FOR INSTANCE, CONSUMABLES AND SUPPLIES, DISSEMINATION (INCLUDING OPEN ACCESS), PROTECTION OF RESULTS, SPECIFIC EVALUATION OF THE ACTION IF IT IS REQUIRED BY THE AGREEMENT, CERTIFICATES ON THE FINANCIAL STATEMENTS IF THEY ARE REQUIRED BY THE AGREEMENT AND CERTIFICATES ON THE METHODOLOGY, TRANSLATIONS, REPRODUCTION.</i></p> | <p>charged, without any mark-ups.</p>   |  |
|                   |  | <p>58) Procurement rules, principles and guides were followed. There were documents of requests to different providers, different offers and assessment of the offers before selection of the provider in line with internal procedures and procurement rules. The purchases were made in accordance with the principle of best value for money.</p> <p><i>(When different offers were not collected the Auditor explains the reasons provided by the Beneficiary under the caption "Exceptions" of the Report. The Commission will analyse this information to evaluate whether these costs might be accepted as eligible)</i></p> |  |
| <p><b>D.4</b></p> | <p><b>AGGREGATED CAPITALISED AND OPERATING COSTS OF RESEARCH INFRASTRUCTURE</b></p> <p>The Auditor ensured the existence of a positive ex-ante assessment (issued by the EC Services) of the cost accounting methodology of the Beneficiary allowing it to apply the guidelines on direct costing for large research infrastructures in Horizon 2020.</p>  | <p>59) The costs declared as direct costs for Large Research Infrastructures (in the appropriate line of the Financial Statement) comply</p>  |  |

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|                   | <p><b><i>In the cases that a positive ex-ante assessment has been issued (see the standard factual findings 59-60 on the next column),</i></b><br/>                 The Auditor ensured that the beneficiary has applied consistently the methodology that is explained and approved in the positive ex ante assessment;</p> <p><b><i>In the cases that a positive ex-ante assessment has NOT been issued (see the standard factual findings 61 on the next column),</i></b><br/>                 The Auditor verified that no costs of Large Research Infrastructure have been charged as direct costs in any costs category;</p> <p><b><i>In the cases that a draft ex-ante assessment report has been issued with recommendation for further changes (see the standard factual findings 61 on the next column),</i></b></p> <ul style="list-style-type: none"> <li>The Auditor followed the same procedure as above (when a positive ex-ante assessment has NOT yet been issued) and paid particular attention (testing reinforced) to the cost items for which the draft ex-ante assessment either rejected the inclusion as direct costs for Large Research Infrastructures or issued recommendations.</li> </ul> | <p>with the methodology described in the positive ex-ante assessment report.</p>   |  |
|                   |  | <p>60) Any difference between the methodology applied and the one positively assessed was extensively described and adjusted accordingly.</p>  |  |
|                   |  | <p>61) The direct costs declared were free from any indirect costs items related to the Large Research Infrastructure.</p>   |  |
| <p><b>E</b></p>   | <p><b>USE OF EXCHANGE RATES</b></p>  |  |  |
| <p><b>E.1</b></p> | <p><u>a) For Beneficiaries with accounts established in a currency other than euros</u></p> <p><b>The Auditor sampled [redacted] cost items selected randomly and verified that the exchange rates used for converting other currencies into euros were in accordance with the following rules established in the Agreement ( full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest):</b></p> <p><i>COSTS INCURRED IN ANOTHER CURRENCY SHALL BE CONVERTED INTO EURO AT THE AVERAGE OF THE DAILY EXCHANGE RATES PUBLISHED IN THE C SERIES OF OFFICIAL JOURNAL OF THE EUROPEAN UNION (<a href="https://www.ecb.int/stats/exchange/eurofxref/html/index.en.html">https://www.ecb.int/stats/exchange/eurofxref/html/index.en.html</a> ), DETERMINED OVER THE CORRESPONDING REPORTING PERIOD.</i></p> <p><i>IF NO DAILY EURO EXCHANGE RATE IS PUBLISHED IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION FOR THE CURRENCY IN QUESTION, CONVERSION SHALL BE MADE AT THE AVERAGE OF THE MONTHLY ACCOUNTING RATES ESTABLISHED BY THE COMMISSION AND PUBLISHED ON ITS WEBSITE</i></p>                                | <p>62) The exchange rates used to convert other currencies into Euros were in accordance with the rules established of the Grant Agreement and there was no difference in the final figures.</p> |  |

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|  | <p><a href="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</a> ),<br/>         DETERMINED OVER THE CORRESPONDING REPORTING PERIOD.</p>   |  |  |
|  | <p>b) For Beneficiaries with accounts established in euros</p> <p>The Auditor sampled [redacted] cost items selected randomly and verified that the exchange rates used for converting other currencies into euros were in accordance with the following rules established in the Agreement ( full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest):</p> <p>COSTS INCURRED IN ANOTHER CURRENCY SHALL BE CONVERTED INTO EURO BY APPLYING THE BENEFICIARY'S USUAL ACCOUNTING PRACTICES.</p> | <p>63) The Beneficiary applied its usual accounting practices.</p> |  |

[legal name of the audit firm]

[name and function of an authorised representative]

[dd Month yyyy]

<Signature of the Auditor>