



European Research Council
Executive Agency

Established by the European Commission



GRANT AGREEMENT

NUMBER — 805189 — B A B E

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

on the one part,

the **European Research Council Executive Agency (ERCEA)** ('the Agency'), under the powers delegated by the European Commission ('the Commission'), represented for the purposes of signature of this Agreement by Head of Unit, European Research Council Executive Agency, Grant Management Department, Starting Grant , Niki ATZOULATOU,

and

on the other part,

'the beneficiary':

Biologicke centrum AV CR, v. v. i. (Biology Centre), established in Branisovska 31, CESKE BUDEJOVICE 370 05, Czech Republic, represented for the purposes of signing the Agreement by Director, Libor GRUBHOFFER, hosting and engaging the following '**principal investigator**':

If one or more beneficiaries accede to this Agreement (see Article 56), the beneficiary hosting and engaging the principal investigator becomes the '**principal beneficiary**'.

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

By signing the Agreement, the beneficiary accepts the grant and agrees to implement it under its responsibility and in accordance with the Agreement, with all the obligations and conditions it sets out.

The Agreement is composed of:

Terms and Conditions

- Annex 1** **Description of the action**
- Annex 2** **Estimated budget for the action**
 - 2a** **Additional information on the estimated budget**
- Annex 3** **Model Accession Form**

- Annex 4** **Model for the financial statements**
- Annex 5** **Model for the certificate on the financial statements**
- Annex 6** **Model for the certificate on the methodology**

TERMS AND CONDITIONS

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CHAPTER 1 GENERAL

ARTICLE 1 — SUBJECT OF THE AGREEMENT

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

CHAPTER 2 ACTION

ARTICLE 2 — ACTION TO BE IMPLEMENTED

The grant is awarded for the action entitled ‘**Why is the world green: testing top-down control of plant-herbivore food webs by experiments with birds, bats and ants — BABE**’ (‘action’), as described in Annex 1.

ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION

The duration of the action will be **60 months** as of the first day of the month following the date the Agreement enters into force (see Article 58) (‘starting date of the action’).

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

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

It contains the estimated eligible costs and the forms of costs, broken down by budget category (see Articles 5, 6).

4.2 Budget transfers

The estimated budget breakdown indicated in Annex 2 may be adjusted — without an amendment (see Article 55) — by transfers of amounts between budget categories and/or forms of costs set out in Annex 2, if the action is implemented as described in Annex 1.

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

CHAPTER 3 GRANT

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

5.1 Maximum grant amount

The ‘maximum grant amount’ is **EUR 1,455,031.75** (one million four hundred and fifty five thousand thirty one EURO and seventy five eurocents).

5.2 Form of grant, reimbursement rate and forms of costs

The grant reimburses **100%** of the beneficiary's eligible costs for the action (see Article 6) ('**reimbursement of eligible costs grant**') (see Annex 2).

The estimated eligible costs of the action are EUR **1,455,031.75** (one million four hundred and fifty five thousand thirty one EURO and seventy five eurocents).

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

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

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

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

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

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

(d) for **other direct costs**:

- for costs of internally invoiced goods and services: on the basis of an amount per unit calculated by the beneficiary in accordance with its usual cost accounting practices ('**unit costs**');
- for all other costs: as actually incurred costs (**actual costs**);

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

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

5.3 Final grant amount — Calculation

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

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

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

Step 2 – Limit to the maximum grant amount

Step 3 – Reduction due to the no-profit rule

Step 4 – Reduction due to substantial errors, irregularities or fraud or serious breach of obligations

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

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

5.3.2 Step 2 — Limit to the maximum grant amount

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

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

The grant must not produce a profit.

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

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

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

The following are considered receipts:

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

The following are however not considered receipts:

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

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

5.3.4 Step 4 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations — Reduced grant amount — Calculation

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

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

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

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

5.4 Revised final grant amount — Calculation

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

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

- in case of **rejection of costs**: by applying the reimbursement rate to the revised eligible costs approved by the Agency;
- in case of **reduction of the grant**: in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations (see Article 43.2).

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

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

6.1 General conditions for costs to be eligible

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

(a) for **actual costs**:

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

(b) for unit costs:

(i) they must be calculated as follows:

{amounts per unit set out in Annex 2a or calculated by the beneficiary in accordance with its usual cost accounting practices (see Article 6.2, Point A and Article 6.2.D.5)

multiplied by

the number of actual units);

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

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

(c) for flat-rate costs:

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

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

6.2 Specific conditions for costs to be eligible

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

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

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

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

A. Direct personnel costs

Types of eligible personnel costs

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

If the beneficiary is a non-profit legal entity¹, it may also declare as personnel costs **additional remuneration** for personnel assigned to the action (including payments on the basis of supplementary contracts regardless of their nature), if:

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

'Additional remuneration' means any part of the remuneration which exceeds what the person would be paid for time worked in projects funded by national schemes.

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

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

{EUR 8 000

divided by

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

multiplied by

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

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

- (a) the person works under conditions similar to those of an employee (in particular regarding the way the work is organised, the tasks that are performed and the premises where they are performed);
- (b) the result of the work carried out belongs to the beneficiary (unless exceptionally agreed otherwise), and
- (c) the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

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

¹ For the definition, see Article 2.1(14) of the Rules for Participation Regulation No 1290/2013: 'non-profit legal entity' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

A.4 If the beneficiary is a small and medium-sized enterprise ('SME'), the costs of its owner who is working on the action and who does not receive a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 2a multiplied by the number of actual hours worked on the action.

A.5 If the beneficiary is a **natural person not receiving a salary**, its costs are eligible personnel costs if they correspond to the amount per unit set out in Annex 2a multiplied by the number of actual hours worked on the action.

Calculation

Personnel costs must be calculated by the beneficiary as follows:

{{hourly rate

multiplied by

the number of actual hours worked on the action},

plus

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

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

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

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

minus

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

The 'hourly rate' is one of the following:

(a) for personnel costs declared as **actual costs** (i.e. budget categories A.1, A.2, A.3): the hourly rate is calculated *per full financial year*, as follows:

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

divided by

number of annual productive hours}.

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

For the 'number of annual productive hours', the beneficiary may choose one of the following:

(i) 'fixed number of hours': 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);

- (ii) ‘individual annual productive hours’: the total number of hours worked by the person in the year for the beneficiary, calculated as follows:

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

plus

overtime worked

minus

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

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

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

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

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

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

As an alternative, the beneficiary may calculate the hourly rate *per month*, as follows:

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

divided by

{number of annual productive hours / 12}}

using the personnel costs for each month and (one twelfth of) the annual productive hours calculated according to either option (i) or (iii) above, i.e.:

- fixed number of hours;
- standard annual productive hours.

Time spent on **parental leave** may not be deducted when calculating the hourly rate per month. However, the beneficiary may declare personnel costs incurred in periods of parental leave in proportion to the time the person worked on the action in that financial year.

If parts of a basic remuneration are generated over a period longer than a month, the

beneficiary may include only the share which is generated in the month (irrespective of the amount actually paid for that month).

The beneficiary must use only one option (per full financial year or per month) for each full financial year;

(b) for personnel costs declared on the basis of **unit costs** (i.e. budget categories A.1, A.2, A.4, A.5): the hourly rate is one of the following:

(i) for an SME owner or beneficiary that is a natural person: the hourly rate set out in Annex 2a (see Points A.4 and A.5 above), or

(ii) for personnel costs declared on the basis of the beneficiary's usual cost accounting practices: the hourly rate calculated by the beneficiary in accordance with its usual cost accounting practices, if:

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

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

and

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

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

C. Direct costs of providing financial support to third parties

Not applicable

D. Other direct costs

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

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

The costs of renting or leasing equipment, infrastructure or other assets (including related duties,

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

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

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

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

- (a) purchased specifically for the action and in accordance with Article 10.1.1 or
- (b) contributed in kind against payment and in accordance with Article 11.1.

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

D.4 Capitalised and operating costs of ‘large research infrastructure’² directly used for the action are eligible, if:

- (a) the value of the large research infrastructure represents at least 75% of the total fixed assets (at historical value in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure³);
- (b) the beneficiary’s methodology for declaring the costs for large research infrastructure has been positively assessed by the Commission (‘**ex-ante assessment**’);
- (c) the beneficiary declares as direct eligible costs only the portion which corresponds to the duration of the action and the rate of actual use for the purposes of the action, and
- (d) they comply with the conditions as further detailed in the annotations to the H2020 grant agreements.

D.5 Costs of internally invoiced goods and services directly used for the action are eligible, if:

² ‘Large research infrastructure’ means research infrastructure of a total value of at least EUR 20 million, for a beneficiary, calculated as the sum of historical asset values of each individual research infrastructure of that beneficiary, as they appear in its last closed balance sheet before the date of the signature of the Agreement or as determined on the basis of the rental and leasing costs of the research infrastructure.

³ For the definition see Article 2(f) of the H2020 Framework Programme Regulation No 1291/2013 : ‘**Research infrastructure**’ are facilities, resources and services that are used by the research communities to conduct research and foster innovation in their fields. Where relevant, they may be used beyond research, e.g. for education or public services. They include: major scientific equipment (or sets of instruments); knowledge-based resources such as collections, archives or scientific data; e-infrastructures such as data and computing systems and communication networks; and any other infrastructure of a unique nature essential to achieve excellence in research and innovation. Such infrastructures may be ‘single-sited’, ‘virtual’ or ‘distributed’.

- (a) they are declared on the basis of a unit cost calculated in accordance with the beneficiary's usual cost accounting practices;
- (b) the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;
- (c) the unit cost is calculated using the actual costs for the good or service recorded in the beneficiary's accounts, excluding any ineligible cost or costs included in other budget categories.

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

- (d) the unit cost excludes any costs of items which are not directly linked to the production of the invoiced goods or service.

'Internally invoiced goods and services' means goods or services which are provided by the beneficiary directly for the action and which the beneficiary values on the basis of its usual cost accounting practices.

E. Indirect costs

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

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

If the beneficiary receives an operating grant⁴ financed by the EU or Euratom budget, it cannot declare indirect costs for the period covered by the operating grant, unless it can demonstrate that the operating grant does not cover any costs of the action.

F. Specific cost category(ies)

Not applicable

6.3 Conditions for costs of linked third parties to be eligible

⁴ For the definition, see Article 121(1)(b) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ('Financial Regulation No 966/2012') (OJ L 218, 26.10.2012, p.1): 'operating grant' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

not applicable

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

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

6.5 Ineligible costs

'Ineligible costs' are:

(a) costs that do not comply with the conditions set out above (Article 6.1 to 6.4), in particular:

- (i) costs related to return on capital;
- (ii) debt and debt service charges;
- (iii) provisions for future losses or debts;
- (iv) interest owed;
- (v) doubtful debts;
- (vi) currency exchange losses;
- (vii) bank costs charged by the beneficiary's bank for transfers from the Agency;
- (viii) excessive or reckless expenditure;
- (ix) deductible VAT;
- (x) costs incurred during suspension of the implementation of the action (see Article 49);

(b) costs declared under another EU or Euratom grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the Agency for the purpose of implementing the EU or Euratom budget); in particular, indirect costs if the beneficiary is already receiving an operating grant financed by the EU or Euratom budget in the same period, unless it can demonstrate that the operating grant does not cover any costs of the action.

6.6 Consequences of declaration of ineligible costs

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

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

CHAPTER 4 RIGHTS AND OBLIGATIONS OF THE PARTIES

SECTION 1 RIGHTS AND OBLIGATIONS RELATED TO IMPLEMENTING THE ACTION

ARTICLE 7 — GENERAL OBLIGATION TO PROPERLY IMPLEMENT THE ACTION

7.1 General obligation to properly implement the action

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

The beneficiary must ensure that the action tasks described in Annex 1 are performed under the guidance of the principal investigator.

7.2 Consequences of non-compliance

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

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

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

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

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

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

In these cases, the beneficiary retains sole responsibility towards the Agency for implementing the action.

ARTICLE 9 — IMPLEMENTATION OF ACTION TASKS BY A BENEFICIARY NOT RECEIVING EU FUNDING

Not applicable

ARTICLE 10 — PURCHASE OF GOODS, WORKS OR SERVICES

10.1 Rules for purchasing goods, works or services

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

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

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

10.1.2 If the beneficiary is a ‘contracting authority’ within the meaning of Directives 2004/18/EC⁵ (or 2014/24/EU⁶) or a ‘contracting entity’ within the meaning of Directives 2004/17/EC⁷ (or 2014/25/EU⁸) must comply with the applicable national law on public procurement.

10.2 Consequences of non-compliance

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

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

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

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

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

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

The beneficiary may declare costs related to the payment of in-kind contributions as eligible (see Article 6.1 and 6.2), up to the third parties’ costs for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services. The costs will appear in the accounts of the beneficiary and will be considered as costs incurred by it (see Article 6.1 and 6.2).

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

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

⁵ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.04.2004, p. 114).

⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.03.2014, p. 65).

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

⁸ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.03.2014, p. 243).

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

11.2 Consequences of non-compliance

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

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

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

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

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

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

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

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

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

12.2 Consequences of non-compliance

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

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

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

13.1 Rules for subcontracting action tasks

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

Subcontracting may cover only a limited part of the action.

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

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

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

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

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

If the beneficiary is a ‘contracting authority’ within the meaning of Directive 2004/18/EC (or 2014/24/EU) or ‘contracting entity’ within the meaning of Directive 2004/17/EC (or 2014/25/EU), it must comply with the applicable national law on public procurement.

13.2 Consequences of non-compliance

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

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

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

ARTICLE 14 — IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES

Not applicable

ARTICLE 14a — IMPLEMENTATION OF ACTION TASKS BY INTERNATIONAL PARTNERS

Not applicable

ARTICLE 15 — FINANCIAL SUPPORT TO THIRD PARTIES

Not applicable

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

Not applicable

SECTION 2 RIGHTS AND OBLIGATIONS RELATED TO THE GRANT ADMINISTRATION

ARTICLE 17 — GENERAL OBLIGATION TO INFORM

17.1 General obligation to provide information upon request

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

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

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

The beneficiary must immediately inform the Agency of any of the following:

- (a) **events** which are likely to affect significantly or delay the implementation of the action or the EU's financial interests, in particular:
 - (i) changes in its legal, financial, technical, organisational or ownership situation
- (b) **circumstances** affecting:
 - (i) the decision to award the grant or
 - (ii) compliance with requirements under the Agreement.

17.3 Consequences of non-compliance

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

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

ARTICLE 18 — KEEPING RECORDS — SUPPORTING DOCUMENTATION

18.1 Obligation to keep records and other supporting documentation

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

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

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

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

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

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

18.1.2 Records and other documentation to support the costs declared

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

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

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

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

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

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

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

18.2 Consequences of non-compliance

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

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

ARTICLE 19 — SUBMISSION OF DELIVERABLES

19.1 Obligation to submit deliverables

The beneficiary must submit the ‘deliverables’ identified in Annex 1, in accordance with the timing and conditions set out in it.

19.2 Consequences of non-compliance

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

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 Obligation to submit reports

The beneficiary must submit to the Agency (see Article 52) the scientific and financial reports set out in this Article. The financial report includes the requests for payment.

The reports must be drawn up using the forms and templates provided in the electronic exchange system (see Article 52).

20.2 Scientific reporting — Reporting periods

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

- SRP1: from month 1 to month 30
- final SRP: from month 31 to 60.

The beneficiary must submit to the Agency a:

- ‘periodic scientific report’ within 60 days after the end of each period (except the last one) and
- ‘final scientific report’ within 60 days after the end of the last reporting period.

The periodic scientific report must include:

- (a) information about the scientific progress of the work;
- (b) achievements and results of the action, such as publications and a declaration of any major change of scientific strategy;
- (c) information on whether and how open access has been provided to these results (see Article 29);
- (d) a summary of the achievements of the action for publication by the Agency.

The **final scientific report** must:

- (a) present the **final results, achievements and conclusions** of the action, and how they have been disseminated (including via scientific publications) (see Article 29);
- (b) contain a summary of the achievements of the action, for publication by the Agency.

20.3 Financial reporting — Payment requests — Reporting periods

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

- FRP1: from month 1 to month 18
- FRP2: from month 19 to month 36
- FRP3: from month 37 to month 54
- final FRP: from month 55 to 60.

The beneficiary must — within 60 days after the end of each period — submit to the Agency a **'financial report'** for each reporting period.

The **financial report** must contain:

- (a) information on the eligible costs, including a **'breakdown of direct costs table'** and a **'budget follow-up table'**;
- (b) an **'individual financial statement'** (see Annex 4) from each beneficiary for the reporting period concerned.

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

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

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

The final financial statements must also detail the **receipts of the action** (see Article 5.3.3).

The beneficiary must **certify** that:

- the information provided is full, reliable and true;
 - the costs declared are eligible (see Article 6);
 - the costs can be substantiated by adequate records and supporting documentation (see Article 18) that will be produced upon request (see Article 17) or in the context of checks, audits and investigations (see Article 22), and
 - for the last reporting period: that all the receipts have been declared (see Article 5.3.3);
- (c) a **'summary financial statement'**, created automatically by the electronic exchange system, including the **request for interim payment** (or — for the last financial reporting period — the **request for payment of the balance**);

- (d) for the last financial reporting period only: a **'certificate on the financial statements'** (see Annex 5) for the beneficiary, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Article 6.2).

20.4 Currency for financial statements and conversion into euro

Financial statements must be drafted in euro.

If the beneficiary has accounting established in a currency other than the euro, it must convert the costs recorded in their accounts into euro at the average of the daily exchange rates published in the C series of the *Official Journal of the European Union*, calculated over the corresponding reporting period.

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

If the beneficiary has accounting established in euro, it must convert costs incurred in another currency into euro according to its usual accounting practices.

20.5 Language of reports

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

20.6 Consequences of non-compliance

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

If the beneficiary breaches its obligation to submit the reports and if it fails to comply with this obligation within 30 days following a written reminder, the Agency may terminate the Agreement (see Article 50) or apply any of the other measures described in Chapter 6.

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the beneficiary:

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

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

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

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

If the total amount of earlier payments is lower than the final grant amount, the Agency will pay the balance within 90 days from receiving the financial report and the final scientific report (see Article 20.3), except if Articles 47 or 48 apply.

Payment is subject to the approval of the financial and final scientific reports. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

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

{{final grant amount (see Article 5.3)
minus
{pre-financing and interim payments (if any) made}}.

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

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

The amount to be paid may however be offset — without the beneficiary's consent — against any other amount owed by the beneficiary to the Agency, the Commission or another executive agency (under the EU or Euratom budget), up to the maximum EU contribution indicated, for the beneficiary, in the estimated budget (see Annex 2).

21.5 Notification of amounts due

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

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

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

21.6 Currency for payments

The Agency will make all payments in euro.

21.7 Payments to the beneficiary

Payments will be made to the beneficiary.

Payments to the beneficiary will discharge the Agency from its payment obligation.

21.8 Bank account for payments

All payments will be made to the following bank account:

Name of bank: RAIFFEISENBANK A.S.
Address of branch: HVEZDOVA 1716/2B CITY TOWER PRAGUE, Czech Republic
Full name of the account holder: BIOLOGICKE CENTRU AV CR VVI
Full account number (including bank codes):
IBAN code: CZ8855000000005002209089

21.9 Costs of payment transfers

The cost of the payment transfers is borne as follows:

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

21.10 Date of payment

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

21.11 Consequences of non-compliance

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

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

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

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

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

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

21.11.2 Not applicable

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

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

22.1.1 Right to carry out checks

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

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

The Agency or the Commission may also request additional information in accordance with Article 17.

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

22.1.2 Right to carry out reviews

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

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

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

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

The beneficiary must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources).

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

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

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

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

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

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

22.1.3 Right to carry out audits

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

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

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

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

The beneficiary must provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Agreement.

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

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

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

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

The '**final audit report**' will take into account observations by the beneficiary. The report will be formally notified to it.

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

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

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

Under Regulations No 883/2013¹² and No 2185/96¹³ (and in accordance with their provisions and

¹² Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC)

procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

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

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/2012¹⁴, the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out audits.

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

22.4 Checks, reviews, audits and investigations for international organisations

Not applicable

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

22.5.1 Findings in this grant

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

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

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

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

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

22.5.2 Findings in other grants

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

No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.09.2013, p. 1).

¹³ Council Regulation (Euratom, EC) No 2185/1996 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

¹⁴ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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

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

22.5.3 Procedure

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

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

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

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

The Agency or the Commission may then start a rejection procedure in accordance with Article 42, on the basis of:

- the revised financial statements, if approved;
 - the proposed alternative correction method, if accepted
- or
- the initially notified correction rate for extrapolation, if it does not receive any observations or revised financial statements, does not accept the observations or the proposed alternative correction method or does not approve the revised financial statements.

22.5.3.2 If the findings concern **substantial errors, irregularities or fraud or serious breach of obligations**: the formal notification will include:

- (a) an invitation to submit observations on the list of grants affected by the findings and

(b) the flat-rate the Agency or the Commission intends to apply according to the principle of proportionality.

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

The Agency or the Commission may then start a reduction procedure in accordance with Article 43, on the basis of:

- the proposed alternative flat-rate, if accepted

or

- the initially notified flat-rate, if it does not receive any observations or does not accept the observations or the proposed alternative flat-rate.

22.6 Consequences of non-compliance

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

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

ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION

23.1 Right to evaluate the impact of the action

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

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

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

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

23.2 Consequences of non-compliance

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

SECTION 3 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND AND RESULTS

SUBSECTION 1 GENERAL

ARTICLE 23a — MANAGEMENT OF INTELLECTUAL PROPERTY

Not applicable

25.6 Consequences of non-compliance

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

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

SUBSECTION 3 RIGHTS AND OBLIGATIONS RELATED TO RESULTS

ARTICLE 26 — OWNERSHIP OF RESULTS

26.1 Ownership by the beneficiary that generates the results

The beneficiary owns the results it generates.

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

26.2 Joint ownership by several beneficiaries

Not applicable

26.3 Rights of third parties (including personnel and the principal investigator)

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

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

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

26.4 Agency ownership, to protect results

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

- (a) the lack of protection is because protecting the results is not possible, reasonable or justified (given the circumstances);
- (b) the lack of protection is because there is a lack of potential for commercial or industrial exploitation, or

- (c) the beneficiary intends to transfer the results to a third party established in an EU Member State or associated country¹⁶, which will protect them.

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

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

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

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

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

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

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

26.5 Consequences of non-compliance

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

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

ARTICLE 27 — PROTECTION OF RESULTS — VISIBILITY OF EU FUNDING

27.1 Obligation to protect the results

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

- (a) the results can reasonably be expected to be commercially or industrially exploited and

¹⁶ For the definition, see 2.1(3) Rules for Participation Regulation No 1290/2013: 'associated country' means a third country which is party to an international agreement with the Union, as identified Article 7 of the H2020 Framework Programme Regulation No 1291/2013. Article 7 sets out the conditions for association of non-EU countries to Horizon 2020.

(b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own legitimate interests.

27.2 Agency ownership, to protect the results

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

27.3 Information on EU funding

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

“The project leading to this application has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement No 805189)”.

27.4 Consequences of non-compliance

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

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

ARTICLE 28 — EXPLOITATION OF RESULTS

28.1 Obligation to exploit the results

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

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

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

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

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

“Results incorporated in this standard have received funding from the European Research Council (ERC)

under the European Union’s Horizon 2020 research and innovation programme (grant agreement No 805189)”.

28.3 Consequences of non-compliance

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

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

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

29.1 Obligation to disseminate results

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

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

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

29.2 Open access to scientific publications

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

In particular, it must:

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

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

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

29.3 Open access to research data

Not applicable

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

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

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

“This project has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement No 805189)”.

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

For the purposes of its obligations under this Article, the beneficiary may use the EU emblem and the ERC logo without first obtaining approval from the Agency.

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

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

29.5 Disclaimer excluding Agency responsibility

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

29.6 Consequences of non-compliance

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

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

ARTICLE 30 — TRANSFER AND LICENSING OF RESULTS

30.1 Transfer of ownership

The beneficiary may transfer ownership of its results.

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

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

30.2 Granting licenses

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

(a) this does not impede the rights under Article 31 and

(b) not applicable.

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

30.3 Agency right to object to transfers or licensing

The Agency may — up to four years after the period set out in Article 3 — object to a transfer of ownership or the exclusive licensing of results, if:

(a) it is to a third party established in a non-EU country not associated with Horizon 2020 and

(b) the Agency considers that the transfer or licence is not in line with EU interests regarding competitiveness or is inconsistent with ethical principles or security considerations.

The beneficiary that intends to transfer ownership or grant an exclusive licence must formally notify the Agency before the intended transfer or licensing takes place and:

- identify the specific results concerned;
- describe in detail the new owner or licensee and the planned or potential exploitation of the results, and
- include a reasoned assessment of the likely impact of the transfer or licence on EU competitiveness and its consistency with ethical principles and security considerations.

The Agency may request additional information.

If the Agency decides to object to a transfer or exclusive licence, it must formally notify the beneficiary within 60 days of receiving notification (or any additional information it has requested).

No transfer or licensing may take place in the following cases:

- pending the Agency decision, within the period set out above;
- if the Agency objects;
- until the conditions are complied with, if the Agency objection comes with conditions.

30.4 Consequences of non-compliance

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

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

ARTICLE 31 — ACCESS RIGHTS TO RESULTS

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

The conditions set out in Article 25.1 apply.

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

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

Not applicable

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

Not applicable

31.4 Access rights of affiliated entities

Not applicable

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

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

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

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

31.6 Access rights for principal investigator

The beneficiary must — on a royalty-free basis — give access to the principal investigator to results needed for his/her activities under the action.

31.7 Consequences of non-compliance

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

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

SECTION 4 OTHER RIGHTS AND OBLIGATIONS

ARTICLE 32 — WORKING CONDITIONS FOR THE PRINCIPAL INVESTIGATOR AND HIS/HER TEAM

32.1 Obligations towards the principal investigator and his/her team

The beneficiaries must respect the following working conditions for the principal investigator and his/her team:

- (a) take all measures to implement the principles set out in the Commission Recommendation on the European Charter for Researchers and the Code of Conduct for the Recruitment of

Researchers¹⁷ — in particular regarding working conditions, transparent recruitment processes based on merit and career development — and ensure that the principal investigator, researchers and third parties involved in the action are aware of them;

(b) enter — before signature of the Agreement — into a ‘**supplementary agreement**’ with the principal investigator, that specifies:

- (i) the obligation of the beneficiary to meet its obligations under the Agreement;
- (ii) the obligation of the principal investigator to supervise the scientific and technological implementation of the action;
- (iii) the obligation of the principal investigator to assume the responsibility for the scientific reporting for the beneficiary and contribute to the financial reporting;
- (iv) the obligation of the principal investigator to meet the time commitments for implementing the action as described in Annex I;
- (v) the obligation of the principal investigator to apply the beneficiary’s usual management practices;
- (vi) the obligation of the principal investigator to inform the beneficiary immediately of any events or circumstances likely to affect the Agreement (see Article 17), such as:
 - a planned transfer of the action (or part of it) to a new beneficiary (see Article 56a);
 - any personal grounds affecting the implementation of the action;
 - any changes in the information that was used as a basis for signing the supplementary agreement;
 - any changes in the information that was used as a basis for awarding the grant;
- (vii) the obligation of the principal investigator to ensure the visibility of EU funding in communications or publications and in applications for the protection of results (see Articles 27, 28, 29 and 38);
- (viii) the obligation of the principal investigator to uphold the intellectual property rights of the beneficiary during the implementation of the action and afterwards;
- (ix) the obligation of the principal investigator to maintain confidentiality (see Article 36);
- (x) for a transfer of the action (or part of it) to a new beneficiary (see Article 56a): the obligation of the principal investigator to:
 - propose to the beneficiary (in writing) to what extent the action will be transferred and the details of the transfer arrangement;
 - provide a statement to the beneficiary with the detailed results of the research up to the time of transfer;

¹⁷ Commission Recommendation 2005/251/EC of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers (OJ L 75, 22.3.2005, p. 67).

- (xi) the right of the Commission and the Agency, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) to exercise their rights under Articles 22 and 23 also towards the principal investigator;
- (xii) the applicable law and the country in which disputes must be settled;
- (c) provide the principal investigator with a copy of the signed Agreement;
- (d) guarantee the principal investigator scientific independence, in particular for the:
 - (i) use of the budget to achieve the scientific objectives;
 - (ii) authority to publish as senior author and invite as co-authors those who have contributed substantially to the work;
 - (iii) preparation of scientific reports for the action;
 - (iv) selection and supervision of the other team members (hosted and engaged by the beneficiary or other legal entities), in line with the profiles needed to conduct the research and in accordance with the beneficiary's usual management practices;
 - (v) possibility to apply independently for funding;
 - (vi) access to appropriate space and facilities for conducting the research;
- (e) provide — during the implementation of the action — research support to the principal investigator and the team members (regarding infrastructure, equipment, access rights, products and other services necessary for conducting the research);
- (f) support the principal investigator and provide administrative assistance, in particular for the:
 - (i) general management of the work and his/her team
 - (ii) scientific reporting, especially ensuring that the team members send their scientific results to the principal investigator;
 - (iii) financial reporting, especially providing timely and clear financial information;
 - (iv) application of the beneficiary's usual management practices;
 - (v) general logistics of the action;
 - (vi) access to the electronic exchange system (see Article 52);
- (g) inform the principal investigator immediately (in writing) of any events or circumstances likely to affect the Agreement (see Article 17);
- (h) ensure that the principal investigator enjoys adequate:
 - (i) conditions for annual, sickness and parental leave;
 - (ii) occupational health and safety standards;

(iii) insurance under the general social security scheme, such as pension rights;

(i) allow the transfer of the Agreement to a new beneficiary ('portability'; see Article 56a)

32.2 Consequences of non-compliance

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

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

ARTICLE 33 — GENDER EQUALITY

33.1 Obligation to aim for gender equality

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

33.2 Consequences of non-compliance

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

ARTICLE 34 — ETHICS AND RESEARCH INTEGRITY

34.1 Obligation to comply with ethical and research integrity principles

The beneficiary must carry out the action in compliance with:

(a) ethical principles (including the highest standards of research integrity)

and

(b) applicable international, EU and national law.

Funding will not be granted for activities carried out outside the EU if they are prohibited in all Member States or for activities which destroy human embryos (for example, for obtaining stem cells).

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

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

(a) aim at human cloning for reproductive purposes;

(b) intend to modify the genetic heritage of human beings which could make such changes heritable (with the exception of research relating to cancer treatment of the gonads, which may be financed), or

- (c) intend to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer.

The beneficiary must respect the highest standards of research integrity — as set out, for instance, in the European Code of Conduct for Research Integrity¹⁸.

This implies notably compliance with the following essential principles:

- honesty;
- reliability;
- objectivity;
- impartiality;
- open communication;
- duty of care;
- fairness and
- responsibility for future science generations.

This means that the beneficiary must ensure that persons carrying out research tasks:

- present their research goals and intentions in an honest and transparent manner;
- design their research carefully and conduct it in a reliable fashion, taking its impact on society into account;
- use techniques and methodologies (including for data collection and management) that are appropriate for the field(s) concerned;
- exercise due care for the subjects of research — be they human beings, animals, the environment or cultural objects;
- ensure objectivity, accuracy and impartiality when disseminating the results;
- allow — as much as possible and taking into account the legitimate interest of the beneficiary — access to research data, in order to enable research to be reproduced;
- make the necessary references to their work and that of other researchers;
- refrain from practicing any form of plagiarism, data falsification or fabrication;
- avoid double funding, conflicts of interest and misrepresentation of credentials or other research misconduct.

34.2 Activities raising ethical issues

¹⁸ The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation) of March 2011.
http://ec.europa.eu/research/participants/data/ref/h2020/other/hi/h2020-ethics_code-of-conduct_en.pdf.

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

Before the beginning of an activity raising an ethical issue, the beneficiary must have obtained:

- (a) any ethics committee opinion required under national law and
 - (b) any notification or authorisation for activities raising ethical issues required under national and/or European law
- needed for implementing the action tasks in question.

The documents must be kept on file and be submitted upon request by the beneficiary to the Agency (see Article 52). If they are not in English, they must be submitted together with an English summary, which shows that the action tasks in question are covered and includes the conclusions of the committee or authority concerned (if available).

34.3 Activities involving human embryos or human embryonic stem cells

Activities involving research on human embryos or human embryonic stem cells may be carried out, in addition to Article 34.1, only if:

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

34.4 Consequences of non-compliance

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

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

ARTICLE 35 — CONFLICT OF INTERESTS

35.1 Obligation to avoid a conflict of interests

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

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

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

35.2 Consequences of non-compliance

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

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

ARTICLE 36 — CONFIDENTIALITY

36.1 General obligation to maintain confidentiality

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

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

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

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

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

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

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

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

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

Under the conditions set out in Article 4 of the Rules for Participation Regulation No 1290/2013¹⁹, the Commission must moreover make available information on the results to other EU institutions, bodies, offices or agencies as well as Member States or associated countries.

The confidentiality obligations no longer apply if:

- (a) the disclosing party agrees to release the other party;
- (b) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;
- (c) the recipient proves that the information was developed without the use of confidential information;

¹⁹ Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" (OJ L 347, 20.12.2013 p.81).

(d) the information becomes generally and publicly available, without breaching any confidentiality obligation, or

(e) the disclosure of the information is required by EU or national law.

36.2 Consequences of non-compliance

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

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

ARTICLE 37 — SECURITY-RELATED OBLIGATIONS

37.1 Results with a security recommendation

Not applicable

37.2 Classified information

Not applicable

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

Not applicable

37.4 Consequences of non-compliance

Not applicable

ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING

38.1 Communication activities by the beneficiary

38.1.1 Obligation to promote the action and its results

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

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

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

38.1.2 Information on EU funding — Obligation and right to use the EU emblem and the ERC logo

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

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

For communication activities: “This project has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement No 805189)”.

For infrastructure, equipment and major results: “This *[infrastructure][equipment][insert type of result]* is part of a project that has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement No 805189)”.

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

For the purposes of its obligations under this Article, the beneficiary may use the EU emblem and the ERC Logo without first obtaining approval from the Agency.

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

Moreover, the beneficiary may not appropriate the EU emblem and the ERC Logo or any similar trademark or logo, either by registration or by any other means.

38.1.3 Disclaimer excluding Agency and Commission responsibility

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

38.2 Communication activities by the Agency and the Commission

38.2.1 Right to use the beneficiary’s materials, documents or information

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

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

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

The right to use a beneficiary’s or principal investigator’s materials, documents and information includes:

- (a) **use for its own purposes** (in particular, making them available to persons working for the Agency, the Commission or any other EU institution, body, office or agency or body or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);
- (b) **distribution to the public** (in particular, publication as hard copies and in electronic or digital

format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);

- (c) **editing or redrafting** for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);
- (d) **translation**;
- (e) **giving access in response to individual requests** under Regulation (EC) No 1049/2001²¹, without the right to reproduce or exploit;
- (f) **storage** in paper, electronic or other form;
- (g) **archiving**, in line with applicable document-management rules, and
- (h) the right to authorise **third parties** to act on its behalf or sub-license the modes of exploitation set out in points (b),(c),(d) and (f) to third parties if needed for the communication and publicising activities of the Agency or the Commission.

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

Where applicable (and if provided by the beneficiary or the principal investigator), the Agency or the Commission will insert the following information:

“© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the European Research Council Executive Agency (ERCEA) and the European Union (EU) under conditions.”

38.3 Consequences of non-compliance

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

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

ARTICLE 39 — PROCESSING OF PERSONAL DATA

39.1 Processing of personal data by the Agency and the Commission

Any personal data under the Agreement will be processed by the Agency or the Commission under Regulation No 45/2001²² and according to the ‘notifications of the processing operations’ to the Data Protection Officer (DPO) of the Agency or the Commission (publicly accessible in the DPO register).

²¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

²² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.01.2001, p. 1).

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

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

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

39.2 Processing of personal data by the beneficiary

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

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

The beneficiary must inform the personnel whose personal data are collected and processed by the Agency or the Commission. For this purpose, it must provide them with the privacy statement(s) (see above), before transmitting their data to the Agency or the Commission.

39.3 Consequences of non-compliance

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

ARTICLE 40 — ASSIGNMENTS OF CLAIMS FOR PAYMENT AGAINST THE AGENCY

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

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

In no circumstances will an assignment release the beneficiary from its obligations towards the Agency.

CHAPTER 5 DIVISION OF BENEFICIARIES’ ROLES AND RESPONSIBILITIES **— RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES —** **RELATIONSHIP WITH PARTNERS OF A JOINT ACTION**

ARTICLE 41 — BENEFICIARY’S ROLES AND RESPONSIBILITIES — RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES — RELATIONSHIP WITH PARTNERS OF A JOINT ACTION

41.1 Roles and responsibility towards the Agency

The beneficiary has full responsibility for implementing the action and complying with the Agreement.

The beneficiary is itself responsible for:

- (a) monitoring that the action is implemented properly (see Article 7);
- (b) informing the Agency immediately of any events or circumstances likely to affect significantly or delay the implementation of the action (see Article 17);
- (c) submitting the deliverables and reports to the Agency (see Articles 19 and 20);
- (d) submitting to the Agency in good time any documents or information required by it

and may not delegate or subcontract these tasks to any third party (including linked third parties).

41.2 Internal division of roles and responsibilities

Not applicable

41.3 Internal arrangements

Not applicable

41.4 Relationship with complementary beneficiaries — Collaboration agreement

Not applicable

41.5 Relationship with partners of a joint action — Coordination agreement

Not applicable

CHAPTER 6 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — SANCTIONS — DAMAGES — SUSPENSION — TERMINATION — FORCE MAJEURE

SECTION 1 REJECTION OF COSTS — REDUCTION OF THE GRANT — RECOVERY — SANCTIONS

ARTICLE 42 — REJECTION OF INELIGIBLE COSTS

42.1 Conditions

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

The rejection may also be based on the **extension of findings from other grants to this grant** (see Article 22.5.2).

42.2 Ineligible costs to be rejected — Calculation — Procedure

Ineligible costs will be rejected in full.

If the rejection of costs does not lead to a recovery (see Article 44), the Agency will formally notify the beneficiary of the rejection of costs, the amounts and the reasons why (if applicable, together with the notification of amounts due; see Article 21.5). The beneficiary may — within 30 days of receiving notification — formally notify the Agency of its disagreement and the reasons why.

If the rejection of costs leads to a recovery, the Agency will follow the contradictory procedure with pre-information letter set out in Article 44.

42.3 Effects

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

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

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

ARTICLE 43 — REDUCTION OF THE GRANT

43.1 Conditions

The Agency may — **at the payment of the balance or afterwards** — reduce the maximum grant amount (see Article 5.1), if:

- (a) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed:
 - (i) substantial errors, irregularities or fraud or
 - (ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or
- (b) the beneficiary (or a natural person who has the power to represent or take decision on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2).

43.2 Amount to be reduced — Calculation — Procedure

The amount of the reduction will be proportionate to the seriousness of the errors, irregularities or fraud or breach of obligations.

Before reduction of the grant, the Agency will formally notify a '**pre-information letter**' to the beneficiary:

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

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

43.3 Effects

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

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

ARTICLE 44 — RECOVERY OF UNDUE AMOUNTS

44.1 Amount to be recovered — Calculation — Procedure

The Agency will — **at the payment of the balance or afterwards** — claim back amount that was paid but is not due under the Agreement.

44.1.1 Recovery after termination of a beneficiary's participation

Not applicable

44.1.2 Recovery at payment of the balance

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

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

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

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

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

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

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

- (b) by **drawing on the Guarantee Fund**. The Agency or the Commission will formally notify the beneficiary the debit note on behalf of the Guarantee Fund and recover the amount:
- (i) not applicable
 - (ii) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

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

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

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

44.1.3 Recovery of amounts after payment of the balance

If, the revised final grant amount (see Article 5.4) is lower than the final grant amount, the beneficiary must repay the difference to the Agency.

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

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

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

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

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

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

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

- (i) not applicable
- (ii) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

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

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

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

ARTICLE 45 — ADMINISTRATIVE SANCTIONS

In addition to contractual measures, the Agency or the Commission may also adopt administrative sanctions under Articles 106 and 131(4) of the Financial Regulation No 966/2012 (i.e. exclusion from future procurement contracts, grants, prizes and expert contracts and/or financial penalties).

SECTION 2 LIABILITY FOR DAMAGES

ARTICLE 46 — LIABILITY FOR DAMAGES

46.1 Liability of the Agency

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

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

46.2 Liability of the beneficiary

Except in case of force majeure (see Article 51), the beneficiary must compensate the Agency for

any damage it sustains as a result of the implementation of the action or because the action was not implemented in full compliance with the Agreement.

SECTION 3 SUSPENSION AND TERMINATION

ARTICLE 47 — SUSPENSION OF PAYMENT DEADLINE

47.1 Conditions

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

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

47.2 Procedure

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

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

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

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

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

ARTICLE 48 — SUSPENSION OF PAYMENTS

48.1 Conditions

The Agency may — at any moment — suspend payments, in whole or in part, if:

- (a) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed or is suspected of having committed:
 - (i) substantial errors, irregularities or fraud or
 - (ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or

- (b) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2).

If suspension concerns the payment of the balance, — once suspension is lifted — the payment or the recovery of the amount(s) concerned will be considered the payment of the balance that closes the action.

48.2 Procedure

Before suspending payments, the Agency will formally notify the beneficiary:

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

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

The suspension will **take effect** the day the confirmation notification is sent by the Agency.

If the conditions for resuming payments are met, the suspension will be **lifted**. The Agency will formally notify the beneficiary.

During the suspension, the periodic report(s) for all reporting periods except the last one (see Article 20.3), must not contain any financial statements. The beneficiary must include them in the next periodic report after the suspension is lifted or — if suspension is not lifted before the end of the action — in the last periodic report.

The beneficiary may suspend implementation of the action (see Article 49.1) or terminate the Agreement (see Article 50.1 and 50.2).

ARTICLE 49 — SUSPENSION OF THE ACTION IMPLEMENTATION

49.1 Suspension of the action implementation, by the beneficiary

49.1.1 Conditions

The beneficiary may suspend implementation of the action or any part of it, if exceptional circumstances — in particular *force majeure* (see Article 51) — make implementation impossible or excessively difficult.

49.1.2 Procedure

The beneficiary must immediately formally notify to the Agency the suspension (see Article 52), stating:

- the reasons why and

- the expected date of resumption.

The suspension will **take effect** the day this notification is received by the Agency.

Once circumstances allow for implementation to resume, the beneficiary must immediately formally notify the Agency and request an **amendment** of the Agreement to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the Agreement has been terminated (see Article 50).

The suspension will be **lifted** with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force.

Costs incurred during suspension of the action implementation are not eligible (see Article 6).

49.2 Suspension of the action implementation, by the Agency

49.2.1 Conditions

The Agency may suspend implementation of the action or any part of it, if:

- (a) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed or is suspected of having committed:
 - (i) substantial errors, irregularities or fraud or
 - (ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles);
- (b) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2), or
- (c) the action is suspected of having lost its scientific or technological relevance.

49.2.2 Procedure

Before suspending implementation of the action, the Agency will formally notify the beneficiary:

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

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

The suspension will **take effect** five days after confirmation notification is received by the beneficiary (or on a later date specified in the notification).

It will be **lifted** if the conditions for resuming implementation of the action are met.

The beneficiary will be formally notified of the lifting and the Agreement will be **amended** to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the Agreement has already been terminated (see Article 50).

The suspension will be lifted with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force.

Costs incurred during suspension are not eligible (see Article 6).

The beneficiary may not claim damages due to suspension by the Agency (see Article 46).

Suspension of the action implementation does not affect the Agency's right to terminate the Agreement (see Article 50), reduce the grant or recover amounts unduly paid (see Articles 43 and 44).

ARTICLE 50 — TERMINATION OF THE AGREEMENT

50.1 Termination of the Agreement, by the beneficiary

50.1.1 Conditions and procedure

The beneficiary may — with the agreement of the principal investigator — terminate the Agreement.

The beneficiary must formally notify termination to the Agency (see Article 52), stating:

- the reasons why and
- the date the termination will take effect. This date must be after the notification.

If no reasons are given or if the Agency considers the reasons do not justify termination, the Agreement will be considered to have been '**terminated improperly**'.

The termination will **take effect** on the day specified in the notification.

50.1.2 Effects

The beneficiary must — within 60 days from when termination takes effect — submit:

- (i) a periodic financial report (for the open reporting period until termination; see Article 20.3) and
- (ii) the final scientific report (see Article 20.3).

If the Agency does not receive the reports within the deadline (see above), only costs which are included in an approved periodic financial report will be taken into account.

The Agency will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4) on the basis of the reports submitted. Only costs incurred until termination are eligible. Costs relating to contracts due for execution only after termination are not eligible.

Improper termination may lead to a reduction of the grant (see Article 43).

After termination, the beneficiary's obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38, 40, 42, 43 and 44) continue to apply.

50.2 Termination of the participation of one or more beneficiaries, by the beneficiaries

Not applicable

50.3 Termination of the Agreement, by the Agency

50.3.1 Conditions

The Agency may terminate the Agreement, if:

- (a) not applicable;
- (b) a change to the legal, financial, scientific organisational or ownership situation of the beneficiary is likely to substantially affect or delay the implementation of the action or calls into question the decision to award the grant;
- (c) not applicable;
- (d) implementation of the action is prevented by force majeure (see Article 51) or suspended by the beneficiary (see Article 49.1) and either:
 - (i) resumption is impossible, or
 - (ii) the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants;
- (e) the beneficiary is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures under national law;
- (f) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has been found guilty of professional misconduct, proven by any means;
- (g) the beneficiary does not comply with the applicable national law on taxes and social security;
- (h) the action — with respect to the state of the art — is no longer of scientific or technological relevance or no longer has any breakthrough potential;
- (i) not applicable;
- (j) not applicable;
- (k) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity;
- (l) the beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed:
 - (i) substantial errors, irregularities or fraud or
 - (ii) serious breach of obligations under the Agreement or during the award procedure

(including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles);

(m) the beneficiary (or the natural person who has the power to represent or take decisions on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2);

(n) not applicable.

(o) the principal investigator is no longer in the position to continue working under the action.

50.3.2 Procedure

Before terminating the Agreement, the Agency will formally notify the beneficiary:

- **informing** of its intention to terminate and the reasons why, and
- **inviting** it, within 30 days of receiving notification, to submit observations and — in case of Point (l.ii) above — to inform the Agency of the measures to ensure compliance with the obligations under the Agreement.

If the Agency does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify to the beneficiary (with copy to the principal investigator) **confirmation** of the termination and the date it will take effect. Otherwise, it will formally notify the beneficiary (with copy to the principal investigator) that the procedure is not continued.

The termination will **take effect**:

- for terminations under Points (b), (e), (g), (h), (j), (l.ii), (n) and (o) above: on the day specified in the notification of the confirmation (see above);
- for terminations under Points (d), (f), (i), (k), (l.i) and (m) above: on the day after notification of the confirmation is received by the beneficiary.

50.3.3 Effects

The beneficiary must — within 60 days from when termination takes effect — submit:

- (i) a periodic financial report (for the last open reporting period until termination) (see Article 20.3) and
- (ii) a final scientific report (see Article 20.2).

If the Agreement is terminated for breach of the obligation to submit report(s) (see Articles 20.6 and 50.3.1(l)), the beneficiary may not submit any reports after termination.

If the Agency does not receive the report(s) within the deadline (see above), only costs which are included in an approved periodic report will be taken into account.

The Agency will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4)

on the basis of the report(s) submitted. Only costs incurred until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

This does not affect the Agency's right to reduce the grant (see Article 43) or to impose administrative sanctions (Article 45).

The beneficiary may not claim damages due to termination by the Agency.

After termination, the beneficiary's obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38, 40, 42, 43 and 44) continue to apply.

SECTION 4 FORCE MAJEURE

ARTICLE 51 — FORCE MAJEURE

'Force majeure' means any situation or event that:

- prevents either party from fulfilling their obligations under the Agreement,
- was unforeseeable, exceptional situation and beyond the parties' control,
- was not due to error or negligence on their part (or on the part of third parties involved in the action), and
- proves to be inevitable in spite of exercising all due diligence.

The following cannot be invoked as force majeure:

- any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure,
- labour disputes or strikes, or
- financial difficulties.

Any situation constituting force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects.

The parties must immediately take all the necessary steps to limit any damage due to force majeure and do their best to resume implementation of the action as soon as possible.

The party prevented by force majeure from fulfilling its obligations under the Agreement cannot be considered in breach of them.

CHAPTER 7 FINAL PROVISIONS

ARTICLE 52 — COMMUNICATION BETWEEN THE PARTIES

52.1 Form and means of communication

Communication under the Agreement (information, requests, submissions, ‘formal notifications’, etc.) must:

- be made in writing and
- bear the number of the Agreement.

All communication must be made through the Participant Portal **electronic** exchange system and using the forms and templates provided there.

If — after the payment of the balance — the Agency finds that a formal notification was not accessed, a second formal notification will be made by registered post with proof of delivery (‘formal notification on paper’). Deadlines will be calculated from the moment of the second notification.

Communications in the electronic exchange system must be made by persons authorised according to the Participant Portal Terms & Conditions. For naming the authorised persons, the beneficiary must have designated — before the signature of this Agreement — a ‘legal entity appointed representative (LEAR)’. The role and tasks of the LEAR are stipulated in his/her appointment letter (see Participant Portal Terms & Conditions).

If the electronic exchange system is temporarily unavailable, instructions will be given on the Agency and Commission websites.

52.2 Date of communication

Communications are considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the electronic exchange system).

Formal notifications through the **electronic** exchange system are considered to have been made when they are received by the receiving party (i.e. on the date and time of acceptance by the receiving party, as indicated by the time stamp). A formal notification that has not been accepted within 10 days after sending is considered to have been accepted.

Formal notifications **on paper** sent by **registered post** with proof of delivery (only after the payment of the balance) are considered to have been made on either:

- the delivery date registered by the postal service or
- the deadline for collection at the post office.

If the electronic exchange system is temporarily unavailable, the sending party cannot be considered in breach of its obligation to send a communication within a specified deadline.

52.3 Addresses for communication

The **electronic exchange system** must be accessed via the following URL:

<https://ec.europa.eu/research/participants/portal/desktop/en/projects/>

The Agency will formally notify the beneficiary in advance any changes to this URL.

Formal notifications on paper (only after the payment of the balance) addressed to **the Agency** must be sent to the official mailing address indicated on the Agency's website.

Formal notifications on paper (only after the payment of the balance) addressed to the beneficiary must be sent to its legal address as specified in the Participant Portal Beneficiary Register.

ARTICLE 53 — INTERPRETATION OF THE AGREEMENT

53.1 Precedence of the Terms and Conditions over the Annexes

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

Annex 2 takes precedence over Annex 1.

53.2 Privileges and immunities

Not applicable

ARTICLE 54 — CALCULATION OF PERIODS, DATES AND DEADLINES

In accordance with Regulation No 1182/71²³, periods expressed in days, months or years are calculated from the moment the triggering event occurs.

The day during which that event occurs is not considered as falling within the period.

ARTICLE 55 — AMENDMENTS TO THE AGREEMENT

55.1 Conditions

The Agreement may be amended, unless the amendment entails changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

Amendments may be requested by any of the parties.

55.2 Procedure

The party requesting an amendment must submit a request for amendment signed in the electronic exchange system (see Article 52).

The request for amendment must include:

- the reasons why;
- the appropriate supporting documents.

The Agency may request additional information.

If the party receiving the request agrees, it must sign the amendment in the electronic exchange system within 45 days of receiving notification (or any additional information the Agency has requested). If it does not agree, it must formally notify its disagreement within the same deadline. The deadline may

²³ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ L 124, 8.6.1971, p. 1).

be extended, if necessary for the assessment of the request. If no notification is received within the deadline, the request is considered to have been rejected.

An amendment **enters into force** on the day of the signature of the receiving party.

An amendment **takes effect** on the date agreed by the parties or, in the absence of such an agreement, on the date on which the amendment enters into force.

ARTICLE 56 — ACCESSION TO THE AGREEMENT

56.1 Addition of new beneficiaries

In justified cases, the beneficiary may request the addition of a new beneficiary.

For this purpose, the beneficiary must submit a request for amendment in accordance with Article 55. It must include an Accession Form (see Annex 3) signed by the new beneficiary in the electronic exchange system (see Article 52).

New beneficiaries must assume the rights and obligations under the Agreement with effect from the date of their accession specified in the Accession Form (see Annex 3).

If a new beneficiary is added, the grant becomes a multi-beneficiary grant and the ERC Multi-beneficiary Model Grant Agreement will apply.

ARTICLE 56a — TRANSFER OF THE AGREEMENT TO A NEW BENEFICIARY — PORTABILITY OF THE GRANT

56a.1 Conditions

The principal investigator may request the transfer of the action (or his/her part of it) to a new beneficiary, provided that the objectives of the action remain achievable.

The beneficiary may object only on the basis that the transfer is not possible under national law.

56a.2 Procedure

The beneficiary must formally notify a **request for amendment** to the Agency (see Article 55).

56a.3 Effects

The former beneficiary must agree with the principal investigator and the new beneficiary on a plan to transfer the intellectual property rights under the Agreement to the new beneficiary.

The Agency will request the former beneficiary to transfer to the new beneficiary any part of the pre-financing (see Article 21) not covered by an approved financial report.

If requested by the principal investigator, the Agency may require the former beneficiary to transfer to the new beneficiary the equipment purchased and used exclusively for the action (against reimbursement of the costs that have not yet been depreciated). The former beneficiary may object only on the basis that the transfer is not possible under national law.

ARTICLE 57 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES

57.1 Applicable law

The Agreement is governed by the applicable EU law, supplemented, if necessary by the law of Belgium.

57.2 Dispute settlement

If a dispute concerning the interpretation, application or validity of the Agreement cannot be settled amicably, the General Court — or, on appeal, the Court of Justice of the European Union — has sole jurisdiction. Such actions must be brought under Article 272 of the Treaty on the Functioning of the EU (TFEU).

If a dispute concerns administrative sanctions, offsetting or an enforceable decision under Article 299 TFEU (see Articles 44, 45 and 46), the beneficiary must bring action before the General Court — or, on appeal, the Court of Justice of the European Union — under Article 263 TFEU. Actions against offsetting and enforceable decisions must be brought against the Commission (not against the Agency).

ARTICLE 58 — ENTRY INTO FORCE OF THE AGREEMENT

The Agreement will enter into force on the day of signature by the Agency or the beneficiary, depending on which is later.

SIGNATURES

For the beneficiary

For the Agency

