



**European Research Council**  
Executive Agency

Established by the European Commission



**Horizon 2020**  
**European Union Funding**  
**for Research & Innovation**

**European Research Council (ERC)**

**Multi-Beneficiary Model Grant Agreement**

**ERC Proof of Concept Lump Sum Pilot**

**(H2020 ERC MGA PoC Lump Sum Pilot — Multi & Mono)**

Version 5.0  
18 September 2018

**Disclaimer**

This document is aimed at assisting applicants for Horizon 2020 funding. It shows the full range of provisions that may be applied to this type of grant agreement, and is provided for information purposes only. The legally binding grant agreement will be that which is signed by the parties for each action.

Grant Agreement number: [insert number] [insert acronym] [insert call identifier]

H2020 Model Grant Agreements: H2020 ERC MGA PoC Lump Sum Pilot — Multi & Mono: v5.0 –  
18.09.2018

<b>HISTORY OF CHANGES</b>		
<b>Version</b>	<b>Publication date</b>	<b>Changes</b>
<u>1.0</u>	n/a	▪ Not applicable
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5.0	18.09.2018	▪ Initial version.

**MODEL GRANT AGREEMENT FOR THE  
HORIZON 2020 PROGRAMME<sup>1</sup>  
ERC PROOF OF CONCEPT LUMP SUM PILOT  
(H2020 ERC MGA PoC LUMP SUM PILOT — MULTI)**

**Introductory remark**

H2020 ERC MGA PoC Lump Sum Pilot — Multi deviates from the H2020 General MGA — Multi as follows:

Generally:

- ‘Coordinator’ is replaced by ‘principal beneficiary’ (also in the Annexes)
- [Agency][Commission] is replaced by ‘Agency’
- References to/options for Euratom are taken out
- Technical and financial report(s) are replaced by ‘report’ or ‘final report’
- The table of contents is adapted
- Cross-references in the footnotes are adapted

In specific Articles:

- Preamble
- Article 4.2
- Article 5.2
- Article 7.1
- Articles 11.1, 12.1, 13.1, 50.1.1, 50.1.2., 50.2.2, 50.3.1, 50.3.2., 50.3.3. (reference to single reporting/final report)
- Articles 9-12 and 14a-16 (not applicable)
- Articles 20 and 21 only final report, no interim payments)
- Articles 25.4, 26.3, 27.3, 28.2, 29.2, 29.3, 29.4, 31.4, 31.6, (reference to the ERC funding, the ERC logo and the Principal Investigator where necessary)
- Article 41.3 (Provisions on internal arrangements)
- Article 56.3

- **Footnotes in blue will not appear in the text generated by the IT system for signature (since they are internal instructions only).**
- **Text in grey indicates that text which appears in the General MGA — Multi is not applicable in this grant agreement.**
- **For options [in italics, in square brackets]: the applicable option must be chosen in the IT system. Options not chosen will automatically either not appear or appear as ‘not applicable’. Options chosen will appear *in italics* without brackets and without the Option title (to allow beneficiaries to easily spot that a specific rule applies).**
- **For fields in [grey in square brackets] (even if they are part of an option as specified in the previous item): enter the appropriate data in the IT system.**
- **The IT system will generate a data sheet confirming the options chosen and the data entered.**

<sup>1</sup> Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) (**‘H2020 Framework Programme Regulation No 1291/2013’**) (OJ L 347, 20.12.2013 p.104).

## GRANT AGREEMENT

NUMBER [insert number] — [insert acronym]

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')<sup>2</sup>, represented for the purposes of signature of this Agreement by [[function, [Directorate-General, Directorate, Unit] [Department]], [forename and surname]],<sup>3</sup>

**and**

**on the other part,**

1. 'the principal beneficiary':

[full official name (short name)], established in [official address in full], [*OPTION for beneficiaries with VAT: VAT number [insert number]*], represented for the purposes of signing the Agreement by [function, forename and surname] hosting [*and engaging*] the following [*OPTION by default: 'principal investigator'*]<sup>4</sup>:

- [Name][Date and place of birth]]<sup>5</sup>

[*OPTION for SyG and other ERC grants with more than one principal investigator: 'corresponding principal investigator'*]:

- [Name][Date and place of birth]

[*and 'other principal investigator(s)'*]:

- [Name][Date and place of birth]

- [Name][Date and place of birth]].]

and the following other beneficiaries, if they sign their 'Accession Form' (see Annex 3 and Article 56):

2. [full official name (short name)], established in [official address in full], [*OPTION for beneficiaries with VAT: VAT number [insert number]*],

<sup>2</sup> Text in *italics* shows the options of the Model Grant Agreement that are applicable to this Agreement.

<sup>3</sup> The person representing the Agency must be an authorising officer (by delegation or sub-delegation), designated in accordance with document 60008 of 22.02.2001 '*Mise en place de la Charte des ordonnateurs*'.

<sup>4</sup> Text in *italics* shows the options of the Model Grant Agreement that are applicable to this Agreement.

<sup>5</sup> Text in *italics* shows the options of the Model Grant Agreement that are applicable to this Agreement.

[same for each beneficiary]

*[OPTION for beneficiaries not receiving EU funding: X. [full official name (short name)], established in [official address in full], [OPTION for beneficiaries with VAT: VAT number [insert number].] as ‘beneficiary not receiving EU funding’ (see Article 9),]*

[same for each beneficiary]

*[OPTION if the JRC is a beneficiary: and X. the Joint Research Centre (JRC) established in [official address in full], if it signs the ‘Administrative Arrangement’ (see Annex 3b)].*

Unless otherwise specified, references to ‘beneficiary’ or ‘beneficiaries’ include the principal beneficiary *[OPTION if the JRC participates: and the Joint Research Centre (JRC)].*

*[OPTION for SyG and other ERC grants with more than one principal investigator: Unless otherwise specified, references to ‘principal investigator’ or ‘principal investigators’ include the corresponding principal investigator.]*

If only one beneficiary signs the grant agreement (‘mono-beneficiary grant’), all provisions referring to the ‘principal beneficiary’ or the ‘beneficiaries’ will be considered referring to the beneficiary.

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

By signing the Agreement or the Accession Form *[OPTION if the JRC is a beneficiary: or the Administrative Arrangement]*, the beneficiaries accept the grant and agree to implement it under their own 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 lump sum breakdown

Annex 3 Accession Forms

*[OPTION to be used if Article 14 applies and if joint and several liability has been requested by the Agency: 3a Declaration on joint and several liability of linked third parties]*

*[OPTION if the JRC participates: 3b Administrative Arrangement]*

Annex 4 Model for the financial statements

Grant Agreement number: [insert number] [insert acronym] [insert call identifier]

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Annex 5 Model for the certificate on the financial statements (CFS) Not applicable

Annex 6 Model for the certificate on the methodology (CoMUC): Not applicable

## 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 beneficiaries 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 [insert title of the action] — [insert acronym] ('**action**'), as described in Annex 1.

### **ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION**

The duration of the action will be [insert number] months as of [*OPTION 1 by default: the first day of the month following the date the Agreement enters into force (see Article 58)*] [*OPTION 2 if needed for the action: [insert date]*]<sup>6</sup> ('**starting date of the action**').

### **ARTICLE 4 — ESTIMATED LUMP SUM BREAKDOWN AND LUMP SUM SHARE TRANSFERS**

#### **4.1    Estimated lump sum breakdown**

The '**estimated lump sum breakdown**' for the action is set out in Annex 2.

It contains the lump sum shares for the work per beneficiary [*and linked third party*].

The estimated lump sum breakdown does not prescribe how the EU contribution is to be used by the beneficiaries. It shows the amounts that the Agency commits to pay if the action is implemented properly, regardless of the costs actually incurred.

#### **4.2    Lump sum share transfers**

The estimated lump sum shares indicated in Annex 2 can be adjusted by transfers of amounts between the beneficiaries, but only via an amendment (see Article 55).

## **CHAPTER 3    GRANT**

### **ARTICLE 5 — GRANT AMOUNT AND FORM OF GRANT**

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<sup>6</sup> This date must be the first day of a month and it must be later than the date of entry into force of the agreement, unless authorised otherwise by the authorising officer, if the applicant can demonstrate the need to start the action before the entry into force of the grant agreement or the need to start the action on another day than the first day of the month. In any case, the starting date should not be earlier than the date of the submission of the grant application (Article 130 FR).

## 5.1 Maximum grant amount

The ‘**maximum grant amount**’ is **EUR 150.000** (one hundred and fifty thousand euros).

## 5.2 Form of grant

The grant takes the form of a lump sum contribution for the implementation of the action.

## 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) — in the following steps:

Step 1 — Calculation of the lump sum for the approved work and reduction for non-approved work

Step 2 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations

### 5.3.1 Step 1 — Calculation of the lump sum for the approved work and reduction for non-approved work

The amount of the lump sum corresponds to the lump sum shares (see Annex 2) declared by the beneficiaries *[and linked third parties]* for the approved work in the financial statement at the payment of the balance (see Article 20.4)..

The grant is reduced (see Article 43) for the part of the work that has not been delivered or cannot be approved at the payment of the balance).

### 5.3.2 Step 2 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations — Reduced grant amount — Calculation

If the grant is further reduced (due to substantial errors, irregularities or fraud or serious breach of obligations other than improper implementation; see Article 43), the Agency will calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion 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 Step 1 or
- the reduced grant amount following Step 2.

## 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 reduces the grant (due to substantial errors, irregularities or fraud or serious breach of obligations including improper implementation; see Article 43), it will calculate the ‘**revised final grant amount**’ for the beneficiary concerned by the findings.

This amount is calculated by the Agency by calculating the concerned beneficiary’s share in the grant amount reduced in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations (see Article 43.2).

## **ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS**

Not applicable

## **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 beneficiaries 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 beneficiaries 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 a 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 beneficiaries must have the appropriate resources to implement the action.

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

- purchase goods, works and services ;

- use in-kind contributions provided by third parties against payment;
- use in-kind contributions provided by third parties free of charge;
- call upon subcontractors to implement action tasks described in Annex 1;
- call upon linked third parties to implement action tasks described in Annex 1;
- call upon international partners to implement action tasks described in Annex 1

in accordance with the specific rules set out in Article 10 to 14a.

In these cases, the beneficiaries retain sole responsibility towards the Agency and the other beneficiaries for implementing the action.

#### **ARTICLE 9 — IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING EU FUNDING**

Not applicable

#### **ARTICLE 10 — PURCHASE OF GOODS, WORKS OR SERVICES**

Not applicable

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

Not applicable

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

Not applicable

#### **ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS**

##### **13.1 Specific rules for subcontracting action tasks**

Subcontracting may cover only a limited part of the action.

The tasks to be implemented for each subcontract must be set out in Annex 1. The Agency may however approve subcontracts not set out in Annex 1 without amendment (see Article 55), if:

- they are specifically justified in the final 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.

*[OPTION for classified information: Action tasks involving classified information may be subcontracted only after explicit approval (in writing) from the Agency (see Article 37).]*

The beneficiaries 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 their subcontractors.

The beneficiaries must ensure that their obligations under Articles 35, 36, 38 and 46 also apply to the subcontractors.

### **13.2 Consequences of non-compliance**

If a 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 14 — IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES**

*[OPTION 1: 14.1 Specific rules for calling upon linked third parties to implement part of the action*

*The following **affiliated entities**<sup>7</sup> and **third parties with a legal link to a beneficiary**<sup>8</sup> ('**linked third parties**') may implement the action tasks attributed to them in Annex 1:*

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<sup>7</sup> For the definition see Article 2.1(2) Rules for Participation Regulation No 1290/2013: '**affiliated entity**' means any legal entity that is:

- under the direct or indirect control of a participant, or
- under the same direct or indirect control as the participant, or
- directly or indirectly controlling a participant.

'Control' may take any of the following forms:

- (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
- (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

However, the following relationships between legal entities shall not in themselves constitute controlling relationships:

- (a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
- (b) the legal entities concerned are owned or supervised by the same public body.

<sup>8</sup> '**Third party with a legal link to a beneficiary**' is any legal entity which has a legal link to the beneficiary implying collaboration that is not limited to the action.

- [name of the entity (short name)], affiliated or linked to [short name of the beneficiary] [OPTION if joint and several liability has been requested: if it has accepted joint and several liability with the beneficiary (see Annex 3a)]
- [name of the entity (short name)], affiliated or linked to [short name of the beneficiary][OPTION if joint and several liability has been requested: if it has accepted joint and several liability with the beneficiary (see Annex 3a)]  
[same for more linked third parties]

*The linked third parties may receive lump sum shares for implementing the action tasks.*

*The beneficiaries 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 their linked third parties.*

*The beneficiaries must ensure that their obligations under Articles 18, 35, 36 and 38 also apply to their linked third parties.*

#### **14.2 Consequences of non-compliance**

*If a 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.]*

**[OPTION 2: 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 beneficiaries must provide — during implementation of the action or afterwards and in accordance with Article 41.2 — any information requested in order to verify 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**

Each 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.

Each beneficiary must immediately inform the principal beneficiary — which must immediately inform the Agency and the other beneficiaries — 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  
*[or those of its linked third parties and*
- (ii) *changes in the name, address, legal form, organisation type of its linked third parties;]*

(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 a 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 beneficiaries must — for a period of [*OPTION 1 by default: five*][*OPTION 2 for low value grants<sup>9</sup>: three*] years after the payment of the balance — keep adequate records and other supporting documentation to prove the proper implementation of the action.

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<sup>9</sup> For the definition, see Article 185 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p.

They 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 Article 22), the beneficiaries must keep the records and other supporting documentation until the end of these procedures.

The beneficiaries 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

Records and other supporting documentation on the scientific and technical implementation of the action must be in line with the accepted standards in the respective field.

The beneficiaries do not need to keep record about the costs actually incurred for implementing the action.

## **18.2 Consequences of non-compliance**

If a 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 19 — SUBMISSION OF DELIVERABLES**

### **19.1 Obligation to submit deliverables**

The principal 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 principal 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**

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1) (‘**Rules of Application Regulation No 1268/2012**’): ‘**low value grants**’ are lower or equal to EUR 60 000.

The principal beneficiary must submit to the Agency (see Article 52) the final report set out in this Article. This report includes the request for payment and must be drawn up using the forms and templates provided in the electronic exchange system (see Article 52).

## 20.2 Reporting periods

The action has one ‘reporting period’:

- RP1: from month 1 to month

## 20.3 PERIODIC REPORTS — REQUESTS FOR INTERIM PAYMENTS

Not applicable

## 20.4 Final report — Request for payment of the balance

The principal beneficiary must submit — within 60 days following the end of the reporting period — the final report, which includes the request for payment of the balance.

The **final report** must include the following:

- (a) a **summary** for publication by the Agency.
- (a) an **overview of the results** of the action, including the deliverables identified in Annex 1 and explanations justifying the differences between the work expected to be carried out in accordance with Annex 1 and that actually carried out.
- (b) a ‘**breakdown of direct cost table**’: not applicable
- (c) an ‘**individual financial statement**’ (see Annex 4) from each beneficiary *[and each linked third party]*, for the reporting period.

The individual financial statement must declare the lump sum share indicated in Annex 2, for the work that was completed in the reporting period.

The beneficiaries may exceptionally also declare a partial lump sum share for the part of the work that was not completed (e.g. due to scientific or technical reasons), if agreed by the Agency.

Lump sum shares which are not declared in the financial statement will not be taken into account by the Agency.

The beneficiaries *[and each linked third party]* must **certify** that:

- the information provided is full, reliable and true;
- the work has been completed and that the action in general has been properly implemented (see Article 7);

- the proper implementation 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, reviews, audits and investigations (see Article 22).

*(d)[OPTION 1 if the JRC is a beneficiary: information on the amount of the payment of the balance to be paid by the Agency to the Joint Research Centre (JRC);][OPTION 2: not applicable;]*

(e) a ‘**summary financial statement**’, created automatically by the electronic exchange system, consolidating the individual financial statements for the reporting period concerned and including the **request for payment of the balance**;

(f) a ‘**certificate on the financial statements**’: not applicable

## 20.5 Information on cumulative expenditure incurred

Not applicable

## 20.6 Currency for financial statements

Financial statements must be drafted in euro.

## 20.7 Language of reports

The final report (including financial statements) must be submitted in the language of the Agreement.

## 20.8 Consequences of non-compliance

If the final report submitted does 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 principal beneficiary breaches its obligation to submit the report 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 principal beneficiary:

- one **pre-financing payment**;

- 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 beneficiaries with a float.

It remains the property of the EU until the payment of the balance.

The amount of the pre-financing payment will be EUR [**insert amount** (insert amount in words)].

The Agency will — except if Article 48 applies — make the pre-financing payment to the principal beneficiary within 30 days, either from the entry into force of the Agreement (see Article 58) or from 10 days before the starting date of the action (see Article 3), whichever is the latest.

An amount of EUR [**insert amount** (insert amount in words)], corresponding to 5% of the maximum grant amount (see Article 5.1), is retained by the Agency from the pre-financing payment and transferred into the ‘**Guarantee Fund**’.

*[OPTION if the JRC is a beneficiary: Moreover, the part of the pre-financing payment related to the Joint Research Centre (JRC) ([insert amount (insert amount in words)]) is not paid to the principal beneficiary, but kept by the Agency for the JRC.]*

## **21.3 Interim payments — Amount — Calculation**

Not applicable

## **21.4 Payment of the balance — Amount — Calculation — Release of the amount retained for the Guarantee Fund**

The payment of the balance reimburses the remaining part of the lump sum for the implementation of the action.

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 final report (see Article 20.4), except if Articles 47 or 48 apply.

Payment is subject to the approval of the final report and the lump sum shares for the work declared. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

The part of the work that has not been delivered or cannot be approved at the payment of the balance will reduce the grant (see Articles 5 and 43).

The **amount due as the balance** is calculated by the Agency by deducting the total amount of pre-financing already made from the final grant amount determined in accordance with Article 5.3:

$$\begin{aligned} & \{ \text{final grant amount (see Article 5.3)} \\ & \text{minus} \\ & \{ \text{pre-financing made} \} \}. \end{aligned}$$

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 principal 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 principal beneficiary
  - is negative, it will be recovered.

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

## **21.5 Notification of amounts due**

When making payments, the Agency will formally notify to the principal beneficiary the amount due and 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 principal beneficiary — Distribution to the beneficiaries**

Payments will be made to the principal beneficiary.

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



The principal beneficiary must distribute the payments between the beneficiaries without unjustified delay.

Pre-financing may however be distributed only:

- (a) if the minimum number of beneficiaries set out in the call for proposals has acceded to the Agreement (see Article 56) and
- (b) to beneficiaries that have acceded to the Agreement (see Article 56).

## 21.8 Bank account for payments

All payments will be made to the following bank account:

Name of bank: [...]  
Full name of the account holder: [...]  
Full account number (including bank codes): [...]  
[IBAN code: [...]]<sup>10</sup>

## 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 beneficiaries are 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 principal beneficiary only upon request submitted within two months of receiving the late payment.

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<sup>10</sup> BIC or SWIFT code applies to for countries if the IBAN code does not apply.

Late-payment interest is not due if all beneficiaries are EU Member States (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 If the principal beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or the participation of the principal beneficiary may be terminated (see Article 50).

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

## **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. The Agency or the Commission may request beneficiaries to provide such information to it directly.

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 principal beneficiary or beneficiary concerned 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 concerned 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 principal beneficiary or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The principal beneficiary or beneficiary concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted. The Agency or the Commission may request beneficiaries to provide such information to it directly.

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

For **on-the-spot** reviews, the beneficiaries must allow access to their 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 principal beneficiary or beneficiary concerned, 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 principal beneficiary or beneficiary concerned 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 concerned 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 principal beneficiary or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

The principal beneficiary or beneficiary concerned must provide — within the deadline requested — any information to verify compliance with the Agreement. The Agency or the Commission may request beneficiaries to provide such information to it directly

For **on-the-spot** audits, the beneficiaries must allow access to their 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 principal beneficiary or beneficiary concerned, 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 principal beneficiary or beneficiary concerned. 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 beneficiaries' statutory records for the periodical assessment of the lump sum.

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

Under Regulations No 883/2013<sup>11</sup> and No 2185/96<sup>12</sup> (and in accordance with their provisions and 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)

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

<sup>12</sup> 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).

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/2012<sup>13</sup>, 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**

*[OPTION 1 for international organisations: In conformity with its financial regulations, the European Union, including the European Anti-Fraud Office (OLAF) and the European Court of Auditors (ECA), may undertake, including on the spot, checks, reviews, audits and investigations.*

*This Article will be applied in accordance with any specific agreement concluded in this respect by the international organisation and the European Union.]*

*[OPTION 2: 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 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.

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**

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<sup>13</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (**‘Financial Regulation No 966/2012’**) (OJ L 298, 26.10.2012, p. 1).

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

- (a) the beneficiary concerned is found, in other EU or Euratom grants awarded under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on this grant and
- (b) those findings are formally notified to the beneficiary concerned — 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 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 concerned the systemic or recurrent errors and its intention to extend these audit findings, together with the list of grants affected.

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 concerned 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 a beneficiary breaches any of its obligations under this Article, the Agency may apply any of the 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 [*OPTION 1 by default: five*] [*OPTION 2 for low value grants: three*] years after the payment of the balance. The evaluation is considered to start on the date of the formal notification to the principal beneficiary or beneficiaries.

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

### **23.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the Agency may apply any of 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**

##### **23a.1 Obligation to take measures to implement the Commission Recommendation on the management of intellectual property in knowledge transfer activities**

Beneficiaries that are universities or other public research organisations must take measures to implement the principles set out in Points 1 and 2 of the Code of Practice annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities<sup>14</sup>.

This does not change the obligations set out in Subsections 2 and 3 of this Section.

The beneficiaries must ensure that researchers and third parties involved in the action are aware of them.

##### **23a.2 Consequences of non-compliance**

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<sup>14</sup> Commission Recommendation C(2008) 1329 of 10.4.2008 on the management of intellectual property in knowledge transfer activities and the Code of Practice for universities and other public research institutions attached to this recommendation.

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

## **SUBSECTION 2 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND**

### **ARTICLE 24 — AGREEMENT ON BACKGROUND**

#### **24.1 Agreement on background**

The beneficiaries must identify and agree (in writing) on the background for the action (**‘agreement on background’**).

**‘Background’** means any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:

- (a) is held by the beneficiaries before they acceded to the Agreement, and
- (b) is needed to implement the action or exploit the results.

#### **24.2 Consequences of non-compliance**

If a 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 25 — ACCESS RIGHTS TO BACKGROUND**

#### **25.1 Exercise of access rights — Waiving of access rights — No sub-licensing**

To exercise access rights, this must first be requested in writing (**‘request for access’**).

**‘Access rights’** means rights to use results or background under the terms and conditions laid down in this Agreement.

Waivers of access rights are not valid unless in writing.

Unless agreed otherwise, access rights do not include the right to sub-license.

#### **25.2 Access rights for other beneficiaries, for implementing their own tasks under the action**

The beneficiaries must give each other access — on a royalty-free basis — to background needed to implement their own tasks under the action, unless the beneficiary that holds the background has — before acceding to the Agreement —:



- (a) informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel), or
- (b) agreed with the other beneficiaries that access would not be on a royalty-free basis.

### 25.3 Access rights for other beneficiaries, for exploiting their own results

The beneficiaries must give each other access — under fair and reasonable conditions — to background needed for exploiting their own results, unless the beneficiary that holds the background has — before acceding to the Agreement — informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel).

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

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

### 25.4 Access rights for affiliated entities

Unless otherwise agreed in the internal arrangements, access to background must also be given — under fair and reasonable conditions (see above; Article 25.3) and unless it is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel) — to affiliated entities<sup>15</sup> established in an EU Member State or ‘**associated country**’<sup>16</sup>, if this is needed to exploit the results generated by the beneficiaries to which they are affiliated.

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<sup>15</sup> For the definition see Article 2.1(2) Rules for Participation Regulation No 1290/2013: ‘**affiliated entity**’ means any legal entity that is:

- under the direct or indirect control of a participant, or
- under the same direct or indirect control as the participant, or
- directly or indirectly controlling a participant.

‘Control’ may take any of the following forms:

- (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
- (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

However, the following relationships between legal entities shall not in themselves constitute controlling relationships:

- (a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
- (b) the legal entities concerned are owned or supervised by the same public body

<sup>16</sup> For the definition, see Article 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 in

Unless agreed otherwise (see above; Article 25.1), the affiliated entity concerned must make the request directly to the beneficiary that holds the background.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

### 25.5 Access rights for third parties

Not applicable

### 25.6 Consequences of non-compliance

If a 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

Results are owned by the beneficiary that generates them.

‘**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

Two or more beneficiaries own results jointly if:

- (a) they have jointly generated them and
- (b) it is not possible to:
  - (i) establish the respective contribution of each beneficiary, or

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*[OPTION 1 for EU grants: 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.] [OPTION 2 for Euratom grants: Article 5 of Council Regulation (Euratom) No 1314/2013 of 16 December 2013 on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020 – The Framework Programme for Research and Innovation (‘H2020 Euratom Research and Training Programme Regulation No 1314/2013’) (OJ L 347, 20.12.2013, p. 948) . Article 5 sets out the conditions for association of non-EU countries to Horizon 2020.]*

- (ii) separate them for the purpose of applying for, obtaining or maintaining their protection (see Article 27).

The joint owners must agree (in writing) on the allocation and terms of exercise of their joint ownership ('**joint ownership agreement**'), to ensure compliance with their obligations under this Agreement.

Unless otherwise agreed in the joint ownership agreement, each joint owner may grant non-exclusive licences to third parties to exploit jointly-owned results (without any right to sub-license), if the other joint owners are given:

- (a) at least 45 days advance notice and
- (b) fair and reasonable compensation.

Once the results have been generated, joint owners may agree (in writing) to apply another regime than joint ownership (such as, for instance, transfer to a single owner (see Article 30) with access rights for the others).

### **26.3 Rights of third parties (including personnel and the principal investigator[s])**

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

If a third party generates results, the beneficiary concerned 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 concerned — assume ownership of results to protect them, if a 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 another beneficiary or third party established in an EU Member State or associated country, 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 concerned within 45 days of receiving notification.

No dissemination relating to these results may take place 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 concerned — assume ownership of results to protect them, if a 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.

A 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 concerned within 45 days of receiving notification.

## **26.5 Consequences of non-compliance**

If a 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**

Each 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

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

When deciding on protection, the beneficiary must consider its own legitimate interests and the legitimate interests (especially commercial) of the other beneficiaries.

## **27.2 Agency ownership, to protect the results**

If a 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 a 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 the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement No [number])”.

## **27.4 Consequences of non-compliance**

If a 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**

Each 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.

*[OPTION for additional exploitation obligations if foreseen in the work programme: In addition, the beneficiaries must — up to four years after the period set out in Article 3 — comply with the additional exploitation obligations set out in Annex 1.]*

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**

*[OPTION for results that could contribute to standards if foreseen in the work programme: If results could reasonably be expected to contribute to European or international standards, the beneficiary concerned must — up to four years after the period set out in Article 3 — inform the Agency.]*

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

“Results incorporated in this standard received funding from the the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement No [Number])”.

## **28.3 Consequences of non-compliance**

If a 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 their legitimate interests, each 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).

*[OPTION for additional dissemination obligations if foreseen in the work programme: In addition, the beneficiaries must comply with the additional dissemination obligations set out in Annex 1.]*

*[OPTION for additional dissemination obligations for interoperability if foreseen in the work programme: Moreover, the beneficiaries must — up to four years after the period set out in Article 3 — disseminate any technical specifications of the results that are needed for interoperability.]*

*[OPTION for additional dissemination obligations for cross-border interoperability if foreseen in the work programme: Moreover, the beneficiaries must — up to four years after the period set out in Article 3 — disseminate the deliverables relating to cross-border interoperability (see Annex 1) and any results needed for cross-border interoperability (in particular common technical specifications and software components).]*

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.

A beneficiary that intends to disseminate its results must give advance notice to the other beneficiaries of — unless agreed otherwise — at least 45 days, together with sufficient information on the results it will disseminate.

Any other beneficiary may object within — unless agreed otherwise — 30 days of receiving notification, if it can show that its legitimate interests in relation to the results or background would be significantly harmed. In such cases, the dissemination may not take place unless appropriate steps are taken to safeguard these legitimate interests.

If a 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**

Each 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**

*[OPTION 1 for actions participating in the Open Research Data Pilot (in line with the provisions in the ERC work programme): Regarding the digital research data generated in the action ('data'), the beneficiaries must:*

- (a) *deposit in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate — free of charge for any user — the following:*
- (i) *the data, including associated metadata, needed to validate the results presented in scientific publications as soon as possible;*
  - (ii) *other data, including associated metadata, as specified in the **data management plan**;*
- (b) *provide information — via the repository — about tools and instruments at the disposal of the beneficiaries and necessary for validating the results (and — where possible — provide the tools and instruments themselves).*

*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.*

*As an exception, the beneficiaries do not have to ensure open access to specific parts of their research data if the achievement of one of the action objectives, as described in Annex 1, would be jeopardised by making those specific parts of the research data openly accessible. In this case, the data management plan must contain the reasons for not giving access.]*

**[OPTION 2: 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 [Number])”.

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

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

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

Moreover, they 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 a 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**

Each 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.

Unless agreed otherwise (in writing) for specifically-identified third parties or unless impossible under applicable EU and national laws on mergers and acquisitions, a beneficiary that intends to transfer ownership of results must give at least 45 days advance notice (or less if agreed in writing) to the other beneficiaries that still have (or still may request) access rights to the results. This notification must include sufficient information on the new owner to enable any beneficiary concerned to assess the effects on its access rights.

Unless agreed otherwise (in writing) for specifically-identified third parties, any other beneficiary may object within 30 days of receiving notification (or less if agreed in writing), if it can show that the transfer would adversely affect its access rights. In this case, the transfer may not take place until agreement has been reached between the beneficiaries concerned.

### **30.2 Granting licences**

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

- (a) this does not impede the access rights under Article 31 and
- (b) *[OPTION 1 if additional exploitation obligations in Annex 1: the beneficiary complies with its additional exploitation obligations (see Article 28.1 and Annex 1)]*  
*[OPTION 2: not applicable].*

In addition to Points (a) and (b), exclusive licences for results may be granted only if all the other beneficiaries concerned have waived their access rights (see Article 31.1).

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**

*[OPTION 1 for EU grants: 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.*

*A 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 concerned 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.]*

***[OPTION 2: Not applicable]***

### **30.4 Consequences of non-compliance**

If a 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**

The beneficiaries must give each other access — on a royalty-free basis — to results needed for implementing their own tasks under the action.

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

The beneficiaries must give each other — under fair and reasonable conditions (see Article 25.3) — access to results needed for exploiting their own results.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

### **31.4 Access rights of affiliated entities**

Unless agreed otherwise in the internal arrangements, access to results must also be given — under fair and reasonable conditions (Article 25.3) — to affiliated entities established in an EU Member State or associated country, if this is needed for those entities to exploit the results generated by the beneficiaries to which they are affiliated.

Unless agreed otherwise (see above; Article 31.1), the affiliated entity concerned must make any such request directly to the beneficiary that owns the results.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

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

*[OPTION 1 by default for EU grants: The beneficiaries must give access to their 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 beneficiaries for communication and publicising activities (see Article 38.2).]*

**[OPTION 2: Not applicable]**

### **31.6 Access rights for principal investigators**

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

### **31.7 Consequences of non-compliance**

If a 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 — RECRUITMENT AND WORKING CONDITIONS FOR RESEARCHERS**

#### **32.1 Obligation to take measures to implement the European Charter for Researchers and Code of Conduct for the Recruitment of Researchers**

The beneficiaries must 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 Researchers<sup>17</sup>, in particular regarding:

- working conditions;
- transparent recruitment processes based on merit, and
- career development.

The beneficiaries must ensure that researchers and third parties involved in the action are aware of them.

#### **32.2 Consequences of non-compliance**

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

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<sup>17</sup> 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).

## **ARTICLE 33 — GENDER EQUALITY**

### **33.1 Obligation to aim for gender equality**

The beneficiaries must take all measures to promote equal opportunities between men and women in the implementation of the action. They 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 a 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 beneficiaries 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 beneficiaries must ensure that the activities under the action have an exclusive focus on civil applications.

The beneficiaries 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.

In addition, the beneficiaries must respect the fundamental principle of research integrity — as set out in the European Code of Conduct for Research Integrity<sup>18</sup>.

This implies compliance with the following fundamental principles:

- **reliability** in ensuring the quality of research reflected in the design, the methodology, the analysis and the use of resources;
- **honesty** in developing, undertaking, reviewing, reporting and communicating research in a transparent, fair and unbiased way;
- **respect** for colleagues, research participants, society, ecosystems, cultural heritage and the environment;
- **accountability** for the research from idea to publication, for its management and organisation, for training, supervision and mentoring, and for its wider impacts

and means that beneficiaries must ensure that persons carrying out research tasks follow the good research practices and refrain from the research integrity violations described in this Code.

This does not change the other obligations under this Agreement or obligations under applicable international, EU or national law, all of which still apply.

### 34.2 Activities raising ethical issues

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, each 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 principal 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).

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<sup>18</sup> European Code of Conduct for Research Integrity of ALLEA (All European Academies) [http://ec.europa.eu/research/participants/data/ref/h2020/other/hi/h2020-ethics\\_code-of-conduct\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/other/hi/h2020-ethics_code-of-conduct_en.pdf).

### **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 principal beneficiary has obtained explicit approval (in writing) from the Agency (see Article 52).

### **34.4 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or participation of the beneficiary 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 beneficiaries 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**').

They 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 a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or participation of the beneficiary 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 a 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 beneficiaries may disclose confidential information to their 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 1290/2013<sup>19</sup>, 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;

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



- (c) the recipient proves that the information was developed without the use of confidential information;
- (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 a 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**

*[OPTION 1 if applicable to the grant: The beneficiaries must comply with the 'security recommendation(s)' set out in Annex 1.*

*For security recommendations restricting disclosure or dissemination, the beneficiaries must — before disclosure or dissemination to a third party (including linked third parties, such as affiliated entities) —, inform the principal beneficiary, which must request written approval from the Agency.]*

*In case of change to the security context, the beneficiaries must inform the principal beneficiary which must immediately inform the Agency and, if necessary, request for Annex 1 to be amended (see Article 55).]*

*[OPTION 2: Not applicable]*

### **37.2 Classified information**

*[OPTION 1 if applicable to the grant: The beneficiaries must comply with the security classification set out in Annex 1 ('security aspect letter (SAL) and 'security classification guide (SCG)').*

*Information that is classified must be treated in accordance with the security aspect letter (SAL) and Decision No 2015/444<sup>20</sup> —until it is declassified.*

*Action tasks involving classified information may not be subcontracted without prior explicit written approval from the Agency.*

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<sup>20</sup> Commission Decision 2015/444/EC, Euratom of 13 March 2015 on the security rules for protecting EU classified information.

*In case of change to the security context, the beneficiaries must inform the principal beneficiary which must immediately inform the Agency and, if necessary, request for Annex I to be amended (see Article 55).]*

*[OPTION 2: Not applicable]*

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

*[OPTION 1 if applicable to the grant: Activities involving dual-use goods or dangerous materials and substances must comply with applicable EU, national and international law.*

*Before the beginning of the activity, the principal beneficiary must submit to the Agency (see Article 52) a copy of any export or transfer licences required under EU, national or international law.]*

*[OPTION 2: Not applicable]*

### **37.4 Consequences of non-compliance**

*[OPTION 1 to be used if 37.1, 37.2 and/or 37.3 are applicable: If a 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.]*

*[OPTION 2: Not applicable]*

## **ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING**

### **38.1 Communication activities by beneficiaries**

#### **38.1.1 Obligation to promote the action and its results**

The beneficiaries 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 beneficiaries 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

(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 [number])”.

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 [number])”.

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

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

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

Moreover, they 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 beneficiaries’ materials, documents or information**

The Agency and the Commission may use, for its 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 (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.

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

The right to use a beneficiary’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 No 1049/2001<sup>21</sup>, 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 use 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), 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 beneficiaries), 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)[Euratom] under conditions.”

### 38.3 Consequences of non-compliance

If a 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.

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<sup>21</sup> 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).

## **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 45/2001<sup>22</sup> 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).

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 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 beneficiaries**

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

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

The beneficiaries must inform the personnel whose personal data are collected and processed by the Agency or the Commission. For this purpose, they 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 a 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**

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

The beneficiaries may not assign any of their claims for payment against the Agency to any third party, except if approved by the Agency on the basis of a reasoned, written request by the principal beneficiary (on behalf of the beneficiary concerned).

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 beneficiaries from their 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 — DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES — RELATIONSHIP WITH COMPLEMENTARY BENEFICIARIES — RELATIONSHIP WITH PARTNERS OF A JOINT ACTION**

#### **41.1 Roles and responsibilities towards the Agency**

The beneficiaries have full responsibility for implementing the action and complying with the Agreement.

The beneficiaries are jointly and severally liable for the **technical implementation** of the action as described in Annex 1. If a beneficiary fails to implement its part of the action, the other beneficiaries become responsible for implementing this part (without being entitled to any additional EU funding for doing so), unless the Agency expressly relieves them of this obligation.

The **financial responsibility** of each beneficiary is governed by Article 44.

#### **41.2 Internal division of roles and responsibilities**

The internal roles and responsibilities of the beneficiaries are divided as follows:

(a) Each **beneficiary** must:

- (i) keep information stored in the Participant Portal Beneficiary Register (via the electronic exchange system) up to date (see Article 17);
- (ii) inform the principal beneficiary immediately of any events or circumstances likely to affect significantly or delay the implementation of the action (see Article 17);
- (iii) submit to the principal beneficiary in good time:
  - individual financial statements for itself *[and its linked third parties]*;

- the data needed to draw up the final report (see Article 20);
- ethics committee opinions and notifications or authorisations for activities raising ethical issues (see Article 34);
- any other documents or information required by the Agency or the Commission under the Agreement, unless the Agreement requires the beneficiary to submit this information directly to the Agency or the Commission.

(b) The **principal beneficiary** must:

- (i) monitor that the action is implemented properly (see Article 7);
- (ii) act as the intermediary for all communications between the beneficiaries and the Agency (in particular, providing the Agency with the information described in Article 17), unless the Agreement specifies otherwise;
- (iii) request and review any documents or information required by the Agency and verify their completeness and correctness before passing them on to the Agency;
- (iv) submit the deliverables and reports to the Agency (see Articles 19 and 20);
- (v) ensure that all payments are made to the other beneficiaries without unjustified delay (see Article 21);
- (vi) inform the Agency of the amounts paid to each beneficiary, when required under the Agreement (see Articles 44 and 50) or requested by the Agency.

The principal beneficiary may not delegate or subcontract the above-mentioned tasks to any other beneficiary or third party (including linked third parties).

*[OPTION to be used when the principal beneficiary is a secondary or higher education establishment or public body and there is an ‘authorisation to administer’ given to a third party created, controlled or affiliated to the principal beneficiary: As an exception, the principal beneficiary delegates the tasks set out in Point 2(b) (v) and (vi) above to [insert name of third party with an authorisation to administer]. The principal beneficiary retains sole responsibility for the EU contribution and for compliance with the obligations under the Agreement.]*

*[OPTION to be used when the principal beneficiary is an European Research Infrastructure Consortium (ERIC)<sup>23</sup> without own resources: As an exception, the principal beneficiary delegates the tasks set out in Point 2(b)(i) to (iv) above to [insert*

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<sup>23</sup> See Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 08.08.2009, p.1).

*[name of member of the ERIC]. The principal beneficiary retains sole responsibility for compliance with the obligations under the Agreement.]*

#### **41.3 Internal arrangements between beneficiaries**

The beneficiaries must have ‘**internal arrangements**’ regarding their operation and co-ordination, covering all aspects of their cooperation and implementation of the action, to ensure the action is implemented properly (including decision making procedures for scientific and grant management issues, the distribution of the EU contribution, internal dispute settlement [*OPTION for SyG and other ERC grants with more than one principal investigator: (including for disputes between the principal investigators and between them and the beneficiaries)*]) and division of responsibilities for cases of rejection of costs or reduction of the grant).

The internal arrangements must not contain any provision contrary to this Agreement.

#### **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**

Not applicable

##### **ARTICLE 43 — REDUCTION OF THE GRANT**

#### **43.1 Conditions**

The Agency may — **after termination of the participation of a beneficiary, at the payment of the balance or afterwards** — reduce the grant, if:

- (a) a 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) a 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 principal beneficiary or beneficiary concerned:

- 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 **after termination of the participation of a beneficiary**, it will calculate the amount due after the reduction (see Article 50.2 and 50.3).

If the Agency reduces the grant at the time of 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 and 21.4).

If the Agency reduces the grant **after the payment of the balance**, it will calculate the revised final grant amount for the beneficiary concerned (see Article 5.4). If the revised final grant amount for the beneficiary concerned is lower than its share of 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 — **after termination of a beneficiary’s participation, at the payment of the balance or afterwards** — claim back any amount that was paid, but is not due under the Agreement.

Each beneficiary’s financial responsibility in case of recovery is limited to its own debt **[OPTION if Article 14 applies: (including undue amounts paid by the Agency for lump sum shares declared by its linked third parties)]**, except for the amount retained for the Guarantee Fund (see Article 21.4).

#### **44.1.1 Recovery after termination of a beneficiary’s participation**

If recovery takes place after termination of a beneficiary’s participation (including the principal beneficiary), the Agency will claim back the undue amount from the beneficiary concerned, by formally notifying it a debit note (see Article 50.2 and 50.3). This note will specify the amount to be recovered, 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 concerned 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) **[OPTION 1 if Article 14 applies and joint and several liability has been requested by the Agency: if a linked third party has accepted joint and several liability (see Article 14), by holding the third party liable up to the maximum grant amount indicated, for the linked third party, in the estimated lump sum breakdown (see Annex 2) and/or][OPTION 2: not applicable;]**
- (c) 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) [, *Article 106a of the Euratom Treaty*] and Article 79(2) of the Financial Regulation No 966/2012.

If payment is not made by the date specified 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<sup>24</sup> applies.

#### 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 principal 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;
- requesting the principal beneficiary to submit a report on the distribution of payments to the beneficiaries within 30 days of receiving notification, and
- inviting the principal beneficiary 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 principal 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 the principal beneficiary does not repay the Agency by the date in the debit note and has not submitted the report on the distribution of payments: the Agency or the Commission will **recover** the amount set out in the debit note from the principal beneficiary (see below).

If the principal beneficiary does not repay the Agency by the date in the debit note, but has submitted the report on the distribution of payments: the Agency will:

- (a) identify the beneficiaries for which the amount calculated as follows is negative:

{ { { beneficiary’s approved lump sum share

[plus

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<sup>24</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 05.12.2007, p. 1).

*its linked third parties' approved lump sum shares}}*,

divided by

the total of all beneficiaries' *[and linked third parties']* lump sum shares for the approved work calculated according to Article 5.3.1 }

multiplied by

the final grant amount (see Article 5.3) }},

minus

{pre-financing received by the beneficiary} }.

- (b) formally notify to each beneficiary identified according to point (a) a **debit note** specifying the terms and date for payment. The amount of the debit note is calculated as follows:

{ {amount calculated according to point (a) for the beneficiary concerned

divided by

the sum of the amounts calculated according to point (a) for all the beneficiaries identified according to point (a) }

multiplied by

the amount set out in the debit note formally notified to the principal beneficiary }.

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 concerned the debit note on behalf of the Guarantee Fund and recover the amount:

- (i) **[OPTION 1 if Article 14 applies and joint and several liability has been requested by the Agency: if a linked third party has accepted joint and several liability (see Article 14), by holding the third party liable up to the maximum grant amount indicated, for the linked third party, in the estimated lump sum break down (see Annex 2) and/or][OPTION 2: 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) [, Article 106a of the Euratom Treaty] 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 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 principal beneficiary, unless Directive 2007/64/EC applies.

#### **44.1.3 Recovery of amounts after payment of the balance**

If, for a beneficiary, the revised final grant amount (see Article 5) is lower than its share of the final grant amount, it must repay the difference to the Agency.

The beneficiary's share of the final grant amount is calculated as follows:

{beneficiary's approved lump sum share

[plus

its linked third parties' approved lump sum shares]}

divided by

the total of all beneficiaries' [and linked third parties'] lump sum shares for the approved work calculated according to Article 5.3.1 }

multiplied by

the final grant amount (see Article 5.3)}.

If the principal beneficiary has not distributed amounts received (see Article 21.7), the Agency will also recover these amounts.

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

- 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 concerned 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 concerned the debit note on behalf of the Guarantee Fund and recover the amount:

- (i) *[OPTION 1 if Article 14 applies and joint and several liability has been requested by the Agency: if a linked third party has accepted joint and several liability (see Article 14), by **holding the third party liable** up to the maximum grant amount indicated, for the linked third party, in the estimated lump sum breakdown (see Annex 2) and/or] [OPTION 2: 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) [, Article 106a of the Euratom Treaty] 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 beneficiaries 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 any of the beneficiaries or third parties involved in the action, as a consequence of implementing the Agreement.

#### **46.2 Liability of the beneficiaries**

Except in case of force majeure (see Article 51), the beneficiaries 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 final report has not been submitted or is not complete or additional information is needed, or
- (c) there is doubt about amounts requested for payment (including the need for a grant reduction) and additional checks, reviews, audits or investigations are necessary.

#### **47.2 Procedure**

The Agency will formally notify the principal 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 principal beneficiary may request the Agency if the suspension will continue.

If the payment deadline has been suspended due to the non-compliance of the final report (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 or the participation of the beneficiary (see Article 50.3.1(1)).

## ARTICLE 48 — SUSPENSION OF PAYMENTS

### 48.1 Conditions

The Agency may — at any moment — suspend payments, in whole or in part and for one or more beneficiaries, if:

- (a) a 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) a 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 payments are suspended for one or more beneficiaries, the Agency will make partial payment(s) for the part(s) not suspended. 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 principal beneficiary or beneficiary concerned:

- 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 principal beneficiary or beneficiary concerned.

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

## **ARTICLE 49 — SUSPENSION OF THE ACTION IMPLEMENTATION**

### **49.1 Suspension of the action implementation, by the beneficiaries**

#### **49.1.1 Conditions**

The beneficiaries 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 principal 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 principal 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 or the participation of a beneficiary 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.

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

### **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) a 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) a 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 principal beneficiary or beneficiary concerned:

- 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 (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 principal beneficiary or beneficiary concerned 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.

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

The beneficiaries 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 or participation of a beneficiary (see Article 50), reduce the grant or recover amounts unduly paid (see Articles 43 and 44).

## **ARTICLE 50 — TERMINATION OF THE AGREEMENT OR OF THE PARTICIPATION OF ONE OR MORE BENEFICIARIES**

### **50.1 Termination of the Agreement, by the beneficiaries**

#### **50.1.1 Conditions and procedure**

The beneficiaries may — with the agreement of the principal investigator[s] — terminate the Agreement.

The principal 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 principal beneficiary must — within 60 days from when termination takes effect — submit the final report (see Article 20.4).

If the Agency does not receive the report within the deadline (see above), the lump sum will not be paid.

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 submitted and compliance with other obligations under the Agreement. Only part of the work completed before termination will be accepted — unless exceptionally agreed otherwise by the Agency.

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

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

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

#### **50.2.1 Conditions and procedure**

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

The principal beneficiary must formally notify termination to the Agency (see Article 52) and inform the beneficiary concerned.

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

The notification must include:

- the reasons why;
- the opinion of the beneficiary concerned (or proof that this opinion has been requested in writing);
- the date the termination takes effect. This date must be after the notification, and
- a request for amendment (see Article 55), with a proposal for reallocation of the tasks and the estimated lump sum breakdown (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 56). If termination takes effect after the period set out in Article 3, no request for amendment must be included unless the beneficiary concerned is the principal beneficiary. In this case, the request for amendment must propose a new principal beneficiary.

If this information is not given or if the Agency considers that the reasons do not justify termination, the participation will be considered to have been **terminated improperly**.

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

### **50.2.2 Effects**

The principal beneficiary must — within 30 days from when termination takes effect — submit:

- (i) a report on the distribution of payments to the beneficiary concerned and
- (ii) if termination takes effect during the period set out in Article 3, a '**termination report**' from the beneficiary concerned, for the open reporting period until termination, containing an overview of the progress of the work and the individual financial statement (see Article 20).

The information in the termination report must also be included in the final report (see Article 20.4).

If the request for amendment is rejected by the Agency (because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the Agreement may be terminated according to Article 50.3.1(c).

If the request for amendment is accepted by the Agency, the Agreement is **amended** to introduce the necessary changes (see Article 55).

The Agency will — on the basis of the termination report and the report on the distribution of payments — **calculate** the amount which is due to the beneficiary and if the payments received by the beneficiary exceed this amount.

The **amount which is due** is calculated in the following steps:

Step 1 — Calculation of the lump sum share for the approved part of the work

If the beneficiary's part of the work is approved, the grant amount for the beneficiary corresponds to its lump sum share (see Annex 2) for the approved work declared in the termination report.

Only the part of the work completed by the beneficiary before termination will be accepted — unless exceptionally agreed otherwise by the Agency.

Step 2 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations

If the grant is reduced (due to substantial errors, irregularities or fraud or serious breach of obligations other than non-implementation of the action; see Article 43), the Agency will calculate the reduced grant amount for the beneficiary by deducting the amount of the reduction (calculated in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations, in accordance with Article 43.2) from the grant amount for the beneficiary.

The amount due will be the lower of the two amounts .

If the payments received **exceed the amounts due**:

- if termination takes effect during the period set out in Article 3 and the request for amendment is accepted, the beneficiary concerned must repay to the principal beneficiary the amount unduly received. The Agency will formally notify the amount unduly received and request the beneficiary concerned to repay it to the principal beneficiary within 30 days of receiving notification. If it does not repay the principal beneficiary, the Agency will draw upon the Guarantee Fund to pay the principal beneficiary and then notify a **debit note** on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);
- in all other cases (in particular if termination takes effect after the period set out in Article 3), the Agency will formally notify a **debit note** to the beneficiary

concerned. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the Agency the amount due and the Agency will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44).

If the payments received **do not exceed the amounts due**: amounts owed to the beneficiary concerned will be included in the final payment.

If the Agency does not receive the termination report within the deadline (see above), the lump sum will not be paid.

If the Agency does not receive the report on the distribution of payments within the deadline (see above), it will consider that:

- the principal beneficiary did not distribute any payment to the beneficiary concerned, and that
- the beneficiary concerned must not repay any amount to the principal beneficiary.

Improper termination may lead to a reduction of the grant (see Article 43) or termination of the Agreement (see Article 50).

After termination, the concerned 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.

### **50.3 Termination of the Agreement or of the participation of one or more beneficiaries, by the Agency**

#### **50.3.1 Conditions**

The Agency may terminate the Agreement or the participation of one or more beneficiaries, if:

- (a) one or more beneficiaries do not accede to the Agreement (see Article 56);
- (b) a change to their legal, financial, technical, organisational or ownership situation *[(or those of its linked third parties)]* is likely to substantially affect or delay the implementation of the action or calls into question the decision to award the grant;
- (c) following termination of participation for one or more beneficiaries (see above), the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants (see Article 55);
- (d) implementation of the action is prevented by force majeure (see Article 51) or suspended by the principal 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) a 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) a 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) a beneficiary does not comply with the applicable national law on taxes and social security;
- (h) the action has lost scientific or technological relevance;
- (i) not applicable;
- (j) not applicable;
- (k) a 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) a 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) a 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).
- (n) *[OPTION 1: despite a specific request by the Agency, a beneficiary does not request — through the principal beneficiary— an amendment to the Agreement to end the participation of one of its linked third parties or international partners that is in one of the situations under points (e), (f), (g), (k), (l) or (m) and to reallocate its tasks][OPTION 2: not applicable].*
- (o) *[a][the]* principal investigator is no longer in the position to continue working under the action.

### 50.3.2 Procedure

Before terminating the Agreement or participation of one or more beneficiaries, the Agency will formally notify the principal beneficiary or beneficiary concerned (with copy to the *[OPTION for SyG and other ERC grants with more than one principal investigator: corresponding]* principal investigator):

- informing it 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 principal beneficiary or to beneficiary concerned (with copy to the *[OPTION for SyG and other ERC grants with more than one principal investigator: corresponding]* principal investigator) **confirmation** of the termination and the date it will take effect. Otherwise, it will formally notify that the procedure is not continued.

The termination will **take effect**:

- for terminations under Points (b), (c), (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 (a), (d), (f), (i), (k), (l.i) and (m) above: on the day after the notification of the confirmation is received.

### 50.3.3 Effects

(a) for **termination of the Agreement**:

The principal beneficiary must — within 60 days from when termination takes effect — submit the final report (see Article 20.4).

If the Agreement is terminated for breach of the obligation to submit the report (see Articles 20.8 and 50.3.1(l)), the principal beneficiary may not submit any report after termination. If the Agency does not receive the report within the deadline (see above), the lump sum will not be paid.

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 submitted and compliance with other obligations under the Agreement. Only part of the work completed before termination will be accepted — unless exceptionally agreed otherwise by the Agency.

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



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

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

(b) for **termination of the participation of one or more beneficiaries**:

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

- (i) a report on the distribution of payments to the beneficiary concerned;
- (ii) a request for amendment (see Article 55), with a proposal for reallocation of the tasks and the estimated lump sum breakdown (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 56). If termination is notified after the period set out in Article 3, no request for amendment must be submitted unless the beneficiary concerned is the principal beneficiary. In this case, the request for amendment must propose a new principal beneficiary, and
- (iii) if termination takes effect during the period set out in Article 3, a **termination report** from the beneficiary concerned, for the open reporting period until termination, containing an overview of the progress of the work and the individual financial statement (see Article 20).

The information in the termination report must also be included in the final report Article 20.4).

If the request for amendment is rejected by the Agency (because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the Agreement may be terminated according to Article 50.3.1(c).

If the request for amendment is accepted by the Agency, the Agreement is **amended** to introduce the necessary changes (see Article 56).

The Agency will — on the basis of the termination report and the report on the distribution of payments — **calculate** the amount which is due to the beneficiary and if the pre-financing payment received by the beneficiary exceeds this amount.

The **amount which is due** is calculated in the following steps:

Step 1 — Calculation of the lump sum share for the approved part of the work

If the beneficiary's part of the work is approved, the grant amount for the beneficiary corresponds to its lump sum share (see Annex 2) for the approved work declared in the termination report.

Only the part of the work completed by the beneficiary before termination will be accepted — unless exceptionally agreed otherwise by the Agency.

Step 2 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations

If the grant is reduced (due to substantial errors, irregularities or fraud or serious breach of obligations other than non-implementation of the action; see Article 43), the Agency will calculate the reduced grant amount for the beneficiary by deducting the amount of the reduction (calculated in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations, in accordance with Article 43.2) from the grant amount for the beneficiary.

The amount due will be the lower of the two amounts .

If the payments received **exceed the amounts due**:

- if termination takes effect during the period set out in Article 3 and the request for amendment is accepted, the beneficiary concerned must repay to the principal beneficiary the amount unduly received. The Agency will formally notify the amount unduly received and request the beneficiary concerned to repay it to the principal beneficiary within 30 days of receiving notification. If it does not repay the principal beneficiary, the Agency will draw upon the Guarantee Fund to pay the principal beneficiary and then notify a **debit note** on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);
- in all other cases (in particular if termination takes effect after the period set out in Article 3), the Agency will formally notify a **debit note** to the beneficiary concerned. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the Agency the amount due and the Agency will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44).

If the payments received **do not exceed the amounts due**: amounts owed to the beneficiary concerned will be included in the final payment.

If the Agency does not receive the termination report within the deadline (see above), the lump sum will not be paid.

If the Agency does not receive the report on the distribution of payments within the deadline (see above), it will consider that:

- the principal beneficiary did not distribute any payment to the beneficiary concerned, and that

- the beneficiary concerned must not repay any amount to the principal beneficiary.

After termination, the concerned 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, each 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:

[insert URL]

The Agency will formally notify the principal beneficiary and beneficiaries 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 beneficiaries** must be sent to their 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**

*[OPTION 1 for all international organisations: Nothing in the Agreement may be interpreted as a waiver of any privileges or immunities accorded to the [insert name of international organisation(s)] by its constituent documents or international law.]*

*[OPTION 2: Not applicable]*

## **ARTICLE 54 — CALCULATION OF PERIODS, DATES AND DEADLINES**

In accordance with Regulation No 1182/71<sup>25</sup>, 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.

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<sup>25</sup> 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).

## 55.2 Procedure

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

The principal beneficiary submits and receives requests for amendment on behalf of the beneficiaries (see Annex 3).

If a change of principal beneficiary is requested without its agreement, the submission must be done by another beneficiary (acting on behalf of the other beneficiaries).

The request for amendment must include:

- the reasons why;
- the appropriate supporting documents, and
- for a change of principal beneficiary without its agreement: the opinion of the principal beneficiary (or proof that this opinion has been requested in writing).

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 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 Accession of the beneficiaries mentioned in the Preamble

The other beneficiaries must accede to the Agreement by signing the Accession Form (see Annex 3) in the electronic exchange system (see Article 52), within 30 days after its entry into force (see Article 58) *[OPTION if Article 14 applies and joint and several liability has been requested: and for beneficiaries for which the Agency has requested joint and several liability of a linked third party, by also submitting — at accession — a declaration on joint and several liability (see Annex 3a) signed by the third party]*.

They will assume the rights and obligations under the Agreement with effect from the date of its entry into force (see Article 58).

If a beneficiary does not accede to the Agreement within the above deadline, the principal beneficiary must — within 30 days — request an amendment to make any changes necessary to ensure proper implementation of the action. This does not affect the Agency’s right to terminate the Agreement (see Article 50).

## **56.2 Addition of new beneficiaries**

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

For this purpose, the principal 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 to a mono-beneficiary grant, the grant becomes a multi-beneficiary grant and the provisions will be applied accordingly.

## **56.3 Transfer to a new beneficiary**

In justified cases, the beneficiary of a mono-beneficiary grant may request the transfer of the action to a new beneficiary, provided that this would not call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

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).

The new beneficiary 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).

## **ARTICLE 57 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

### **57.1 Applicable law**

*[OPTION 1 for mono-beneficiary grants:*

*[OPTION 1a by default: The Agreement is governed by the applicable EU law, supplemented, if necessary by the law of Belgium.]*

*[OPTION 1b for international organisations that do not accept any applicable law clause:: Not applicable]*

*[OPTION 1c for international organisations that would accept an applicable law clause, but not the standard clause (EU + Belgian law): The Agreement is governed [by the*

*applicable EU law] [, supplemented if necessary] [by the law of [Belgium]][[insert name of another Member State or EFTA country]]] [and, where appropriate,] [by the general principles governing the law of international organisations and the rules of general international law].]*

**[OPTION 2 for multi-beneficiary grants:**

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

**[additional OPTION for international organisations that do not accept any applicable law clause:** *As an exception, there is no applicable law for [insert name(s) of the international organisations concerned].]*

**[additional OPTION for international organisations that would accept an applicable law clause, but not the standard clause (EU + Belgian law):** *As an exception, the Agreement is governed by a different applicable law for the following beneficiaries:*

- *[insert name(s) of the international organisations concerned]: [by the applicable EU law][, supplemented if necessary] [by the law of [Belgium]][[insert name of another Member State or EFTA country]]] [and, where appropriate,] [by the general principles governing the law of international organisations and the rules of general international law]*
- *[insert name(s) of the international organisations concerned]: [by the applicable EU law][, supplemented if necessary] [by the law of [Belgium]][[insert name of another Member State or EFTA country]]] [and, where appropriate,] [by the general principles governing the law of international organisations and the rules of general international law]*  
*[same for other international organisations].]*

## 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).

**[additional OPTION for non-EU beneficiaries (except beneficiaries established in an associated country<sup>26</sup> with an association agreement to Horizon 2020 that stipulates sole jurisdiction of the European Court of Justice):** *As an exception, if such a dispute is between the Agency and [insert non-EU beneficiary(ies) name(s)], the competent Belgian courts have sole jurisdiction.]*

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<sup>26</sup> For the definition, see 2.1(3) of 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)” (“**Rules for Participation Regulation No 1290/2013**”) (OJ L 347, 20.12.2013 p.81): ‘**associated country**’ means a third country which is party to an international agreement with the Union, as identified in 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.



*[additional OPTION for international organisations and for beneficiaries not receiving EU funding because not eligible for EU funding (see Article 9) which according to their national law cannot be subject to the jurisdiction of the Belgian courts: As an exception, for the following beneficiaries:*

- [insert name of international organisation or beneficiary not eligible for EU funding]
  - [insert name of international organisation or beneficiary not eligible for EU funding]
- [same for other beneficiaries that are international organisations or beneficiary not eligible for EU funding]

*such disputes must — if they cannot be settled amicably — be referred to arbitration. Each party must formally notify to the other party its intention of resorting to arbitration and the identity of the arbitrator. The Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of entry into force of the Agreement will apply. The appointing authority will be the Secretary-General of the Permanent Court of Arbitration following a written request submitted by either party. The arbitration proceedings must take place in Brussels and the language used in the arbitral proceedings will be English. The arbitral award will be binding on all parties and will not be subject to appeal.]*

If a dispute concerns administrative sanctions, offsetting or an enforceable decision under Article 299 TFEU (see Articles 44, 45 and 46), the beneficiaries 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 principal beneficiary, depending on which is later.

### **SIGNATURES**

For the principal beneficiary

[function/forename/surname]  
[electronic signature]

Done in [English] on [electronic time stamp]

For the Agency

[forename/surname]  
[electronic signature]

Done in [English] on [electronic time stamp]

Grant Agreement number: [insert number] [insert acronym] [insert call identifier]

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18.09.2018

## ANNEX 2

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MODEL ANNEX 2 FOR H2020 ERC MGA PoC LUMP SUM PILOT

### ESTIMATED LUMP SUM BREAKDOWN

	Lump sum share for the work	EU contribution
		Maximum grant amount <sup>1</sup>
1 [short name beneficiary]		
[short name linked third party]		
Total beneficiary		
2 [short name beneficiary]		
[short name linked third party]		
Total beneficiary		
Total consortium		

<sup>1</sup> The 'maximum grant amount' is the maximum grant amount fixed in the grant agreement (on the basis of the sum of the beneficiaries' lump sum shares).

## ACCESSION FORM FOR BENEFICIARIES

[Full official name of the beneficiary/new beneficiary/new principal beneficiary (short name)], established in [official address in full], [*OPTION for beneficiaries with VAT: Vat number [insert number], ([‘the beneficiary’][‘the principal beneficiary’])*], represented for the purpose of signing this Accession Form by [forename and surname, function],

**hereby agrees**

**to become [beneficiary][principal beneficiary] No [insert beneficiary no]**

**in Grant Agreement No [insert agreement number] (‘the Agreement’)**

**between [full official name of the principal beneficiary] and the European Research Council Executive Agency (ERCEA (‘the Agency’), under the power delegated by the European Commission (‘the Commission’),]**

**for the action entitled [insert title of the action (insert acronym)].**

*[OPTION for beneficiaries/new beneficiaries: and mandates*

*the principal beneficiary to submit and sign in its name and on its behalf any amendments to the Agreement, in accordance with Article 55.]*

By signing this Accession Form, the beneficiary accepts the grant and agrees to [*OPTION for new principal beneficiaries: take on the obligations and role of principal beneficiary and to*] implement it in accordance with the Agreement, with all the obligations and conditions it sets out [*OPTION for new beneficiaries:, as from[insert date] [the date of signature of the Accession Form][the date of entry into force of the amendment] (‘accession date’) [additional OPTION for change of beneficiary due to partial takeover:, and with joint and several liability for undue amounts paid to [insert short name of former principal beneficiary] (i.e. recoveries)] — if the Agency agrees with the request for amendment*].

SIGNATURE

For the beneficiary/new beneficiary/new principal beneficiary:

[function/forename/surname]

[electronic signature]

Done in [English] on [electronic time stamp]

**ANNEX 3a**

**DECLARATION ON JOINT AND SEVERAL LIABILITY OF  
LINKED THIRD PARTIES**

*(to be filled by the linked third party and submitted by the beneficiary, if Article 14 applies and linked third party liability has been requested by the Agency)*

**[full official name of the entity affiliated or linked to the beneficiary (short name)]** , established in [official address in full], *[OPTION for linked third parties with VAT: VAT number [insert number]]* ('the linked third party'), represented for the purpose of signing this Declaration on joint and several liability by its legal representative(s) [forename and surname, function of the legal representative(s) of the linked third party],

linked to beneficiary No [insert number] [full official name of the beneficiary (short name)], established in [official address in full], *[OPTION for beneficiaries with VAT: VAT number [insert number]]* ('the beneficiary'),

**hereby accepts joint and several liability with the beneficiary**

for any amount owed to the Agency by the beneficiary under Grant Agreement No [insert agreement number] [(insert acronym)], up to the the maximum grant amount indicated, for the linked third party, in the estimated lump sum breakdown (see Annex 2).

The linked third party irrevocably and unconditionally agrees to pay amounts requested under this Declaration to the Agency, immediately and at first demand.

For the linked third party  
[forename/surname/function]

signature

Done in English at [place], on [date]

Grant Agreement number: [insert number] [insert acronym] [insert call identifier]

**ANNEX 4**

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**MODEL ANNEX 4 FOR H2020 ERC MGA PoC LUMP SUM PILOT**

**FINANCIAL STATEMENT FOR [BENEFICIARY [name]]/LINKED THIRD PARTY [name] FOR REPORTING PERIOD [reporting period]**

	Lump sum share for the work	EU contribution
		Requested EU contribution
[short name beneficiary/linked third party]		

**The beneficiary/linked third party hereby confirms that:**  
The information provided is complete, reliable and true.  
The action has been fully and properly implemented (see Article 7)  
The proper implementation can be substantiated by adequate records and supporting documentation that will be produced upon request or in the context of checks, reviews, audits and investigations (see Articles 17, 18 and 22).

Grant Agreement number: [insert number] [insert acronym] [insert call identifier]

H2020 Model Grant Agreements: H2020 ERC MGA PoC Lump Sum Pilot: v5.0 – 18.09.2018

**ANNEX 5**

Not applicable

Grant Agreement number: [insert number] [insert acronym] [insert call identifier]

H2020 Model Grant Agreements: H2020 ERC MGA PoC Lump Sum Pilot: v5.0 – 18.09.2018

**ANNEX 6**

Not applicable