

Model Start-up Grant Agreement

European Institute of Innovation and Technology (EIT)

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Disclaimer

This document aims to support applicants for the EIT's Call for Knowledge and Innovation Communities (KIC) Proposals under Horizon 2020, the EU Framework Programme for Research and Innovation (2014-2020). It shows the full range of provisions that may be applied to this type of agreement, and is provided for information purposes only. The legally binding agreement will be that which is signed by the parties.

EIT START-UP GRANT AGREEMENT

NUMBER SUGA 2017 [KIC NAME]

on the other part, this Agreement ('the Agreement') is between the following parties:

on the one part,

the **European Institute of Innovation and Technology**, a European Union body having legal personality and established by Regulation (EC) No. 294/2008¹ of the European Parliament and of Council as amended by Regulation (EU) No 1292/2013² of the European Parliament and of the Council, represented for the purposes of signature of this Start-Up Grant Agreement by its **Director, [name]**, hereinafter referred to as the "EIT",

and

1. 'the coordinator':

[official name and form],

[registration number], established in **[official address]**, **[VAT number]**, represented for the purposes of signing the Agreement by **[name and official function]**

and the following other beneficiaries,

a) *who have already signed their 'Accession form' at the time of the signature of the Agreement (see Annex 3 and Article 56):*

2. **[official name and form]**

[registration number], established in **[official address]**, **[VAT number]**;

3. **[official name and form]**

[registration number], established in **[official address]**, **[VAT number]**;

4. **[official name and form]**

[registration number], established in **[official address]**, **[VAT number]**;

b) *If they sign their 'Accession Form' (see Annex 3 and Article 56):*

5. **[official name and form]**, **[country]**

6. **[official name and form]**, **[country]**

7. **[official name and form]**, **[country]**

as designated by the EIT Governing Board on **[date]**.

¹ OJ L97 of 09.04.2008

² OJ L347 of 20.12.2013

Unless otherwise specified, references to 'beneficiary' or 'beneficiaries' include the coordinator.

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, 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 (Start-up Plan)
- Annex 2 Estimated budget for the action
- Annex 3 Accession Forms
- Annex 4 Model for the financial statements
- Annex 5 Model for the certificate on the financial statements
- Annex 6 Unit costs applicable under the SUGA³
- Annex 7 List of linked third parties

³ The exact types of unit cost to be applied under the SUGA will be based on the Commission Decision that will be adopted within 2016.

TERMS AND CONDITIONS

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 **start-up activities in order to set up the EIT [NAME] Knowledge and Innovation Community — EIT [NAME] KIC ('action')**, as described in Annex 1.

ARTICLE 3 — DURATION AND STARTING DATE OF THE ACTION

The duration of the action will be as of [date] 2017 ('starting date of the action') until 31 December 2017.

ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS

4.1 Estimated budget

The '**estimated budget**' for the action is set out in Annex 2.

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary (and linked third party) and budget category (see Articles 5, 6) and by areas and segments.

4.2 Budget transfers

The estimated budget breakdown indicated in Annex 2 may be adjusted by transfers of amounts between beneficiaries or between budget categories or areas and segments (or all three). This does not require an amendment according to Article 55, if the action is implemented as described in Annex 1.

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

CHAPTER 3 GRANT

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

5.1 Maximum grant amount

The 'maximum grant amount' is EUR [insert amount (insert amount in words)].

5.2 Form of grant, reimbursement rates and forms of costs

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

The estimated eligible costs of the action are EUR [insert amount (insert amount in words)].

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

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

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

Personnel costs for **SME owners** or **beneficiaries that are natural persons** not receiving a salary (see Article 6.2, Points A.4 and A.5) must be declared on the basis of the amount per unit set out in Annex 6 (**unit costs**);

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

(c) Not applicable

(d) for **other direct costs**: as actually incurred costs (**actual costs**);

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

(f) *[OPTION for specific unit costs (if unit cost foreseen by Commission decision and applicable to the grant): for [insert name of specific cost category(ies)⁴]: on the basis of the amount(s) per unit set out in Annex 6⁵ (unit costs).]*

⁴ Insert precise name of the cost category (as in the Commission decision authorising the use of the unit cost/lump sum). For example: 'access costs for providing trans-national access to research infrastructure', 'costs for clinical studies', 'costs for energy efficiency measures in buildings'.

⁵ Annex 6 must clearly show, for each beneficiary (and linked third party) concerned, all the parameters for the unit cost (i.e. the unit(s), the amount(s) per unit, the research installation/infrastructure for which it is used, the clinical study for which it is used, etc).

[OPTION for specific lump sum costs (if lump sum foreseen by Commission decision and applicable to the grant): for [insert name of specific cost category(ies)]: as the lump sum set out in Annex 6 ('lump sum costs').]

[OPTION: specific cost category(ies): not applicable.]

5.3 Final grant amount — Calculation

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

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

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

Step 2 — Limit to the maximum grant amount

Step 3 — Reduction due to the no-profit rule

Step 4 — Reduction due to improper implementation or breach of other obligations

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

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

5.3.2 Step 2 — Limit to the maximum grant amount

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

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

The grant must not produce a profit.

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

The **'action's total eligible costs'** are the consolidated total eligible costs approved by the EIT.

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

The following are considered **receipts**:

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

The following are however not considered receipts:

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

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

5.3.4 Step 4 — Reduction due to improper implementation or breach of other obligations — Reduced grant amount — Calculation

If the grant is reduced (see Article 43), the EIT will calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the action or to the seriousness of the breach of obligations in accordance with Article 43.2) from the maximum grant amount set out in Article 5.1.

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

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

5.4 Revised final grant amount — Calculation

If — after the payment of the balance (in particular, after checks, reviews, audits or investigations; see Article 22) — the EIT rejects costs (see Article 42) or reduces the grant (see Article 43), it will calculate the '**revised final grant amount**' for the beneficiary concerned by the findings.

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

- in case of **rejection of costs**: by applying the reimbursement rate to the revised eligible costs approved by the EIT for the beneficiary concerned;

- in case of **reduction of the grant**: by calculating the concerned beneficiary's share in the grant amount reduced in proportion to its improper implementation of the action or to the seriousness of its breach of obligations (see Article 43.2).

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

ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

6.1 General conditions for costs to be eligible

'Eligible costs' are costs that meet the following criteria:

(a) for **actual costs**:

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

(b) for **unit costs**:

- (i) they must be calculated as follows:
 - {amounts per unit set out in Annex 6 or calculated by the beneficiary in accordance with its usual cost accounting practices (see Article 6.2, Point A)
 - multiplied by
 - the number of actual units};
- (ii) the number of actual units must comply with the following conditions:

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

(c) for **flat-rate costs**:

- (i) they must be calculated by applying the flat-rate, and
- (ii) the costs (actual costs or unit costs) to which the flat-rate is applied must comply with the conditions for eligibility set out in this Article.

6.2 Specific conditions for costs to be eligible

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

- A. direct personnel costs;
- B. direct costs of subcontracting;
- C. not applicable;
- D. other direct costs;
- E. indirect costs;
- F. **[OPTION for specific unit costs: [insert name(s) of specific cost category(ies)⁶].**

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

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

A. Direct personnel costs **[(not covered by Point F)]**

Types of eligible personnel costs

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

⁶ Insert precise name of the cost category (as in the Commission decision authorising the use of the unit cost/lump sum). For example: 'access costs for providing trans-national access to research infrastructure', 'costs for clinical studies', 'costs for energy efficiency measures in buildings'.

Beneficiaries that are non-profit legal entities⁷ may also declare as personnel costs **additional remuneration** for personnel assigned to the action (including payments on the basis of supplementary contracts regardless of their nature), if:

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

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

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

{{EUR 8 000

divided by

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

multiplied by

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

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

- (a) the person works under the beneficiary's instructions and, unless otherwise agreed with the beneficiary, on the beneficiary's premises;
- (b) the result of the work carried out belongs to the beneficiary, and
- (c) the costs are not significantly different from those for personnel performing similar tasks under an employment contract with the beneficiary.

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

⁷ For the definition, see Article 2.1(14) of the Rules for Participation Regulation No 1290/2013: '**non-profit legal entity**' means a legal entity which by its legal form is non-profit-making or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.

A.4 **Costs of owners** of beneficiaries that are small and medium-sized enterprises (**'SME owners'**), who are working on the action and who do not receive a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 6 multiplied by the number of actual hours worked on the action.

A.5 **Costs of 'beneficiaries that are natural persons'** not receiving a salary are eligible personnel costs, if they correspond to the amount per unit set out in Annex 6 multiplied by the number of actual hours worked on the action.

Calculation

Personnel costs must be calculated by the beneficiaries as follows:

{{hourly rate

multiplied by

number of actual hours worked on the action},

plus

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

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

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

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

minus

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

The **'hourly rate'** is one of the following:

(a) for personnel costs declared as **actual costs**: the hourly rate is the amount calculated as follows:

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

divided by

number of annual productive hours}.

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

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

- (i) 'fixed number of hours': 1 720 hours for persons working full time (or corresponding pro-rata for persons not working full time);
- (ii) 'individual annual productive hours': the total number of hours worked by the person in the year for the beneficiary, calculated as follows:

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

plus

overtime worked

minus

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

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

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

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

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

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

- (b) for personnel costs declared on the basis of **unit costs**: the hourly rate is one of the following:

- (i) for SME owners or beneficiaries that are natural persons: the hourly rate set out in Annex 6 (see Points A.4 and A.5 above), or

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

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

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

and

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

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

C. Not applicable

D. Other direct costs

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

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

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

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

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

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

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

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

D.4 Not applicable

E. Indirect costs

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

- (a) costs of subcontracting and;
- (b) costs of in-kind contributions provided by third parties which are not used on the beneficiary's premises;
- (c) Not applicable;
- (d) *[OPTION if Article 6.2.F applies and the specific unit cost/[lump sum] cost covers indirect costs: [unit costs under Articles 5.2(f) and 6.2.F.][lump sum costs under Articles 5.2(f) and 6.2.F.]*

Beneficiaries receiving an operating grant⁸ financed by the EU or Euratom budget cannot declare indirect costs for the period covered by the operating grant.

F. *[OPTION: [Insert name of specific cost category(ies)]⁹[OPTION if no specific cost categories applicable to the grant: Specific cost category(ies)]*

[OPTION for specific unit costs (if unit cost foreseen by Commission decision and applicable to the grant): [Insert name of specific cost category] are eligible, if they correspond to the amount per unit set out in Annex 6 multiplied by the number of actual units [and if [insert eligibility conditions, if any]].]

⁸ For the definition, see Article 121(1)(b) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ('**Financial Regulation No 966/2012**') (OJ L 218, 26.10.2012, p.1): '**operating grant**' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

⁹ Insert precise name of the cost category (as in the Commission decision authorising the use of the unit cost/lump sum). For example: 'access costs for providing trans-national access to research infrastructure', 'costs for clinical studies', 'costs for energy efficiency measures in buildings'.

[OPTION for specific lump sum costs (if lump sum foreseen by Commission decision and applicable to the grant): [Insert name of specific cost category] are eligible, if they correspond to the lump sum set out in Annex 6 and the corresponding tasks or parts of the action have been properly implemented in accordance with Annex 1.]

[same for each specific cost category]

6.3 Conditions for costs of linked third parties to be eligible

Costs incurred by linked third parties are eligible if they fulfil — *mutatis mutandis* — the general and specific conditions for eligibility set out in this Article (Article 6.1 and 6.2) and Article 14.1.1.

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

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

6.5 Ineligible costs

'Ineligible costs' are:

- (a) costs that do not comply with the conditions set out above (Article 6.1 to 6.4), in particular:
 - (i) costs related to return on capital;
 - (ii) debt and debt service charges;
 - (iii) provisions for future losses or debts;
 - (iv) interest owed;
 - (v) doubtful debts;
 - (vi) currency exchange losses;
 - (vii) bank costs charged by the beneficiary's bank for transfers from the EIT;
 - (viii) excessive or reckless expenditure;
 - (ix) deductible VAT;
 - (x) costs incurred during suspension of the implementation of the action (see Article 49);
- (b) costs declared under another EU or Euratom grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the EIT for the purpose of implementing the EU or Euratom budget); in particular, indirect

costs if the beneficiary is already receiving an operating grant financed by the EU or Euratom budget in the same period;

(c) Not applicable.

6.6 Consequences of declaration of ineligible costs

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

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

MODEL

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.

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

In these cases, the beneficiaries retain sole responsibility towards the EIT 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

10.1 Rules for purchasing goods, works or services

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

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

The beneficiaries must ensure that the EIT, 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 contractors.

10.1.2 Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2004/18/EC¹⁰ or ‘contracting entities’ within the meaning of Directive 2004/17/EC¹¹ must comply with the applicable national law on public procurement.

10.2 Consequences of non-compliance

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

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

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

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

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

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

The beneficiaries may declare costs related to the payment of in-kind contributions as eligible (see Article 6.1 and 6.2), up to the third parties’ costs for the seconded persons, contributed equipment, infrastructure or other assets or other contributed goods and services.

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

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

¹⁰ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.04.2004, p. 114).

¹¹ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.04.2004, p. 1).

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

11.2 Consequences of non-compliance

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

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

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

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

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

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

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

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

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

12.2 Consequences of non-compliance

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

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

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

13.1 Rules for subcontracting action tasks

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

Subcontracting may cover only a limited part of the action.

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

The beneficiaries must also ensure that every prior information notice, contract notice or contract award notice published in relation to the subcontracting includes the following disclaimer:

“This procurement receives funding from the European Institute of Innovation and Technology (EIT), a body of the European Union, under the H2020 research and innovation programme, under the grant agreement No [number]. The EIT is however not participating as a contracting authority in this procurement.”

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

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

The beneficiaries must ensure that the EIT, 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.

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

Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2004/18/EC or ‘contracting entities’ within the meaning of Directive 2004/17/EC must comply with the applicable national law on public procurement.

13.2 Consequences of non-compliance

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

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

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

ARTICLE 14 — IMPLEMENTATION OF ACTION TASKS BY LINKED THIRD PARTIES

14.1 Rules for calling upon linked third parties to implement part of the action

14.1.1 The **affiliated entities**¹² and **third parties with a legal link to a beneficiary**¹³ ('linked third parties') included in Annex 7 may implement the action tasks attributed to them in Annex 1.

The linked third parties may declare as eligible the costs they incur for implementing the action tasks in accordance with Article 6.3.

The beneficiaries must ensure that EIT, 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.

14.1.2 The beneficiaries must ensure that their obligations under Articles 18, 20, 35, 36 and 38 also apply to their linked third parties.

14.2 Consequences of non-compliance

If any obligation under Article 14.1.1 is breached, the costs of the linked third party will be ineligible (see Article 6) and will be rejected (see Article 42).

If any obligation under Article 14.1.2 is breached, the grant may be reduced (see Article 43).

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

ARTICLE 15 — FINANCIAL SUPPORT TO THIRD PARTIES

15.1 Rules for providing financial support to third parties

Not applicable

15.2 Financial support in the form of prizes

Not applicable

15.3 Consequences of non-compliance

¹² 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.

¹³ '**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.

Not applicable

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

16.1 Rules for providing trans-national access to research infrastructure

Not applicable

16.2 Rules for providing virtual access to research infrastructure

Not applicable

16.3 Consequences of non-compliance

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 eligibility of the costs, proper implementation of the action and compliance with any other obligation under the Agreement.

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

Each beneficiary must keep information stored in the ‘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 coordinator — which must immediately inform the EIT 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 5 years after the payment of the balance — keep records and other supporting documentation in order to prove the proper implementation of the action and the costs they declare as eligible.

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 EIT may accept non-original documents if it considers that they offer a comparable level of assurance.

18.1.1 Records and other supporting documentation on the technical implementation

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

18.1.2 Records and other documentation to support the costs declared

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

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

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

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

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

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

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

For costs declared by linked third parties (see Article 14), it is the beneficiary that must keep the originals of the financial statements and the certificates on the financial statements of the linked third parties.

18.2 Consequences of non-compliance

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

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

ARTICLE 19 — SUBMISSION OF DELIVERABLES

19.1 Obligation to submit deliverables

The coordinator 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 coordinator breaches any of its obligations under this Article, the EIT may apply any of the measures described in Chapter 6.

ARTICLE 20 — REPORTING — PAYMENT REQUESTS

20.1 Obligation to submit reports

20.1.1 The coordinator will provide the EIT with an interim progress report by 15 September 2017.

20.1.2 The coordinator must submit to the EIT (see Article 52) the final start-up and financial reports set out in this Article. These reports include the request for payment and must be submitted in accordance with Article 52.

20.2 Reporting periods

Not applicable

20.3 Periodic reports — Requests for interim payments

Not applicable.

20.4 Final reports — Request for payment of the balance

The coordinator must submit the final reports within 60 days following the end of the final date of the implementation of the action.

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

- (a) a ‘**final start-up report**’ with a **summary** for publication containing:
 - (i) an overview of the results;
 - (ii) the conclusions on the action.
- (b) a ‘**final financial report**’ containing:
 - (i) a ‘**final summary financial statement**’ (see Annex 4a), including the **request for payment of the balance** and individual financial statements (see Annex 4b) by beneficiaries those request EIT contribution, and

- (ii) a ‘**certificate on the financial statements**’ (drawn up in accordance with Annex 5) for each beneficiary and for each linked third party, if it requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 5.2 and Article 6.2, Point A).

20.5 Information on cumulative expenditure incurred

Not applicable

20.6 Currency for financial statements and conversion into euro

Financial statements must be drafted in euro.

Beneficiaries and linked third parties with accounting established in a currency other than the euro must convert the costs recorded in their accounts into euro, at the average of the daily exchange rates published in the C series of the *Official Journal of the European Union*, calculated over the corresponding reporting period.

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

Beneficiaries and linked third parties with accounting established in euro must convert costs incurred in another currency into euro according to their usual accounting practices.

20.7 Language of reports

All reports (start-up and financial reports, including financial statements) must be submitted in English, the working language of the EIT.

20.8 Consequences of non-compliance — Suspension of the payment deadline — Termination

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

If the coordinator breaches its obligation to submit the reports and if it fails to comply with this obligation within 30 days following a written reminder sent by the EIT, the Agreement may be terminated (see Article 50).

ARTICLE 21 — PAYMENTS AND PAYMENT ARRANGEMENTS

21.1 Payments to be made

The following payments will be made to the coordinator:

- a **pre-financing payment**;

- a **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 EIT will — except if Article 48 applies — make the pre-financing payment to the coordinator within 30 days from the entry into force of the Agreement (see Article 58).

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 EIT from the pre-financing payment and transferred into the 'Guarantee Fund'

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 eligible costs incurred by the beneficiaries for the implementation of the action.

If the total amount of the pre-financing payment 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 pre-financing payment is lower than the final grant amount, the EIT will pay the balance within 90 days from receiving the final reports (see Article 20.4), except if Articles 47 or 48 apply.

Payment is subject to the approval of the final reports. Its approval does not imply recognition of the compliance, authenticity, completeness or correctness of its content.

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

{final grant amount (see Article 5.3)

minus

{pre-financing payment made}}.

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

- if the balance is positive: the amount released will be paid in full to the coordinator 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 coordinator
 - is negative, it will be recovered.

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

21.5 Notification of amounts due

For the payment of the balance, the EIT will formally notify to the coordinator, the notification will specify the amount due and 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 EIT will make all payments in euro.

21.7 Payments to the coordinator — Distribution to the beneficiaries

Payments will be made to the coordinator.

Payments to the coordinator will discharge the EIT from its payment obligation.

The coordinator must distribute the payments between the beneficiaries without unjustified delay.

Pre-financing may however be distributed only 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: [...]

Address of branch: [...]

Full name of the account holder: [...]

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

IBAN code: [...] ¹⁴

21.9 Costs of payment transfers

The cost of the payment transfers is borne as follows:

- the EIT 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 EIT 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 EIT 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 coordinator only upon request submitted within two months of receiving the late payment.

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 coordinator breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or the participation of the coordinator 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

¹⁴ BIC or SWIFT code applies to for countries if the IBAN code does not apply.

22.1 Checks, reviews and audits by the EIT

22.1.1 Right to carry out checks

The EIT 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 EIT may be assisted by external persons or bodies.

The EIT may also request additional information in accordance with Article 17. The EIT 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 EIT 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.

Reviews may be started **up to two years after the payment of the balance**. They will be formally notified to the coordinator 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 EIT may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator 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 coordinator or beneficiary concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources). The EIT may request beneficiaries to provide such information to it directly.

The coordinator 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 EIT will formally notify the review report to the coordinator 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 EIT 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 coordinator 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 EIT may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator 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 coordinator or beneficiary concerned must provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Agreement. The EIT 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 EIT will formally notify the draft audit report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations ('**contradictory audit procedure**'). This period may be extended by the EIT in justified cases.

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

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

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

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

Under Regulations No 883/2013¹⁵ and No 2185/96¹⁶ (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)

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/2012¹⁷, the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out audits.

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

22.4 Checks, reviews, audits and investigations for international organisations

Not applicable

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

22.5.1 Findings in this grant

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

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

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

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

¹⁵ 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).

¹⁶ 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).

¹⁷ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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

22.5.2 Findings in other grants

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

22.5.3 Procedure

The EIT 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.

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

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

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

The amounts to be rejected will be determined on the basis of the revised financial statements, subject to their approval.

If the EIT does not receive any observations or revised financial statements, does not accept the observations or the proposed alternative correction method or does not approve the revised financial

statements, it will formally notify the beneficiary concerned the application of the initially notified correction rate for extrapolation.

If the EIT accepts the alternative correction method proposed by the beneficiary concerned, it will formally notify the application of the accepted alternative correction method.

22.5.3.2 If the findings concern **improper implementation** or a **breach of another obligation**: 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 EIT 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.

If the EIT does not receive any observations or does not accept the observations or the proposed alternative flat-rate, it will formally notify the beneficiary concerned the application of the initially notified flat-rate.

If the EIT accepts the alternative flat-rate proposed by the beneficiary concerned, it will formally notify the application of the accepted alternative flat-rate.

22.6 Consequences of non-compliance

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

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

ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION

23.1 Right to evaluate the impact of the action

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

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

The EIT 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 coordinator 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 EIT may apply the measures described in Chapter 6.

SECTION 3 RIGHTS AND OBLIGATIONS RELATED TO BACKGROUND AND RESULTS

SUBSECTION 1 GENERAL

ARTICLE 23a — MANAGEMENT OF INTELLECTUAL PROPERTY

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 activities¹⁸.

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

If a beneficiary breaches its obligations under this Article, the EIT 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

¹⁸ 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 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 consortium agreement, 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 entities¹⁹ established in an EU Member State or ‘associated country’²⁰, if this is needed to exploit the results generated by the beneficiaries to which they are affiliated.

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

¹⁹ 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.

²⁰ For the definition, see Article 2.1(3) Rules for Participation Regulation No 1290/2013: ‘associated country’ means a non EU-country (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.

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
 - (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)

If third parties (including personnel) 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 EIT ownership, to protect results

26.4.1 The EIT 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 EIT 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 EIT 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 EIT takes a positive decision, until it has taken the necessary steps to protect the results.

26.4.2 The EIT 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 EIT 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 EIT 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 EIT ownership, to protect the results

If a beneficiary intends not to protect its results, to stop protecting them or not seeks an extension of protection, The EIT 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 EIT requests or agrees otherwise or unless it is impossible — include the following:

“The activity leading to this application has received funding from the European Institute of Innovation and Technology (EIT), a body of the European Union, under the Horizon 2020 research and innovation programme under 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.

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

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

If results are incorporated in a standard, the beneficiary concerned must — unless the EIT 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 European Institute of Innovation and Technology (EIT), a body of the European Union under the Horizon 2020 research and innovation programme under 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).

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 EIT 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.

The bibliographic metadata must be in a standard format and must include all of the following:

- the terms "*European Union (EU)*" and "*Horizon 2020*";
- the name of the action, acronym and grant number;
- the publication date, and length of embargo period if applicable, and
- a persistent identifier.

29.3 Open access to research data

Not applicable

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

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

- (a) display the EIT KIC logo as adopted by the EIT;
- (b) display the EU emblem and

(c) include the following text:

“This activity has received funding from the European Institute of Innovation and Technology (EIT), a body of the European Union under the Horizon 2020 research and innovation programme under grant agreement No [Number]”.

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

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

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

Moreover, they may not appropriate the EIT KIC logo and the EU emblem or any similar trademark or logo, either by registration or by any other means.

29.5 Disclaimer excluding EIT’s responsibility

Any dissemination of results must indicate that it reflects only the author's view and that the EIT 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) 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 EIT right to object to transfers or licensing

The EIT 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 EIT 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 EIT 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 EIT may request additional information.

If the EIT 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 EIT decision, within the period set out above;
- if the EIT objects;

- until the conditions are complied with, if the EIT objection comes with conditions.

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 consortium agreement, 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

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).

31.6 Access rights for third parties

Not applicable

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 Researchers²¹, 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 EIT may apply any of the measures described in Chapter 6.

ARTICLE 33 — GENDER EQUALITY

33.1 Obligation to aim for gender equality

²¹ 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).

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 EIT may apply any of the measures described in Chapter 6.

ARTICLE 34 — ETHICS

34.1 Obligation to comply with ethical principles

The beneficiaries must carry out the action in compliance with:

- (a) ethical principles (including the highest standards of research integrity — as set out, for instance, in the European Code of Conduct for Research Integrity²² — and including, in particular, avoiding fabrication, falsification, plagiarism or other research misconduct) 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.

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.

34.2 Activities raising ethical issues

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

²² The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation) of March 2011.
http://www.esf.org/fileadmin/Public_documents/Publications/Code_Conduct_ResearchIntegrity.pdf

Before the beginning of an activity raising an ethical issue, the coordinator must submit (see Article 52) to the EIT copy of:

- (a) any ethics committee opinion required under national law and
- (b) any notification or authorisation for activities raising ethical issues required under national law.

If these documents are not in English, the coordinator must also submit an English summary of the submitted opinions, notifications and authorisations (containing, if available, the conclusions of the committee or authority concerned).

If these documents are specifically requested for the action, the request must contain an explicit reference to the action title. The coordinator must submit a declaration by each beneficiary concerned that all the submitted documents cover the action tasks.

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 only if:

- they are set out in Annex 1 or
- the coordinator has obtained explicit approval (in writing) from the EIT (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 EIT 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 EIT 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 EIT 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 EIT may disclose confidential information to its staff, other EU institutions and bodies or 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 1290/2013²³, 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:

²³ 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).

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

Not applicable

37.2 Classified results

Not applicable

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

Not applicable

37.4 Consequences of non-compliance

Not applicable

ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING

38.1 Communication activities by 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 confidentiality obligations in Article 36 which still apply.

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

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

Unless the EIT 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 EIT KIC logo as adopted by the EIT;
- (b) display the EU emblem and
- (c) follow the brand guidelines outlined in the EIT Community Brand Book as adopted by the EIT; and
- (d) include the following text:

For communication activities: ‘This activity has received funding from the European Institute of Innovation and Technology (EIT), a body of the European Union, under the H2020 research and innovation programme under grant agreement No [Number].’

For infrastructure, equipment and major results: “This [infrastructure][equipment][insert type of result] is part of an activity that has received funding from the European Institute of Innovation and Technology (EIT), a body of the European Union, under the H2020 research and innovation programme under grant agreement No [Number]”.

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

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

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

Moreover, they may not appropriate the EIT KIC logo and the EU emblem or any similar trademark or logo, either by registration or by any other means.

38.1.3 Disclaimer excluding EIT responsibility

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

38.2 Communication activities by the EIT

38.2.1 Right to use beneficiaries’ materials, documents or information

The EIT 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 that it receives from any beneficiary (including in electronic form).

This does not change the confidentiality obligations in Article 36 which still apply.

However, if the EIT's use of these materials, documents or information would risk compromising legitimate interests, the beneficiary concerned may request the EIT 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 EIT 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 1049/2001²⁴, 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 EIT.

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 EIT will insert the following information:

²⁴ 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.

“© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the European Institute of Innovation and Technology (EIT) 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.

ARTICLE 39 — PROCESSING OF PERSONAL DATA

39.1 Processing of personal data by the EIT and the Commission

Any personal data under the Agreement will be processed by the EIT or the Commission under Regulation No 45/2001²⁵ and according to the ‘notifications of the processing operations’ to the Data Protection Officer (DPO) of the EIT or the Commission (publicly accessible in the DPO register).

Such data will be processed by the ‘data controller’ of the EIT 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 ‘service specific privacy statement(s) (SSPS)’ that are published on the EIT 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 EIT or the Commission. For this purpose, they must provide them with the service specific privacy statement(s) (SSPS) (see above), before transmitting their data to the EIT or the Commission.

39.3 Consequences of non-compliance

²⁵ 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).

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

ARTICLE 40 — ASSIGNMENTS OF CLAIMS FOR PAYMENT AGAINST THE EIT

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

If the EIT 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 EIT.

CHAPTER 5 DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES

ARTICLE 41 — DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES

41.1 Roles and responsibilities towards the EIT

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 EIT expressly relieves them of this obligation.

The **financial responsibility** of each beneficiary is governed by Articles 44, 45 and 46.

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) Not applicable;
 - (ii) inform the coordinator immediately of any events or circumstances likely to affect significantly or delay the implementation of the action (see Article 17);
 - (iii) submit to the coordinator in good time:
 - individual financial statements for itself and its linked third parties and, if required, certificates on the financial statements (see Article 20);
 - the data needed to draw up the start-up 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 EIT under the Agreement, unless the Agreement requires the beneficiary to submit this information directly to the EIT.

(b) The **coordinator** 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 EIT (in particular, providing the EIT with the information described in Article 17), unless the Agreement specifies otherwise;
- (iii) request and review any documents or information required by the EIT and verify their completeness and correctness before passing them on to the EIT;
- (iv) submit the deliverables and reports to the EIT (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 EIT of the amounts paid to each beneficiary, when required under the Agreement (see Articles 44 and 50) or requested by the EIT.

The coordinator may not delegate the above-mentioned tasks to any other beneficiary or subcontract them to any third party.

41.3 Internal arrangements between beneficiaries — Consortium agreement

Not applicable

41.4 Relationship with complementary beneficiaries — Collaboration agreement

Not applicable

41.5 Relationship with partners of a joint action — Coordination agreement

Not applicable

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

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

ARTICLE 42 — REJECTION OF INELIGIBLE COSTS

42.1 Conditions

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

42.1.2 The rejection may also be based on the **extension of findings from other grants to this grant**, under the conditions set out in Article 22.5.2.

42.2 Ineligible costs to be rejected — Calculation — Procedure

Ineligible costs will be rejected in full.

If the EIT rejects costs **without reduction of the grant** (see Article 43) or **recovery of undue amounts** (see Article 44), it will formally notify the coordinator or beneficiary concerned the rejection of costs, the amounts and the reasons why (if applicable, together with the notification of amounts due; see Article 21.5). The coordinator or beneficiary concerned may — within 30 days of receiving notification — formally notify the EIT of its disagreement and the reasons why.

If the EIT rejects costs **with reduction of the grant** or **recovery of undue amounts**, it will formally notify the rejection in the **'pre-information letter'** on reduction or recovery set out in Articles 43 and 44.

42.3 Effects

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

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

ARTICLE 43 — REDUCTION OF THE GRANT

43.1 Conditions

43.1.1 The EIT may — **at the payment of the balance** or **afterwards** — reduce the maximum grant amount (see Article 5.1), if the action has not been implemented properly as described in Annex 1 or another obligation under the Agreement has been breached.

43.1.2 The EIT may also reduce the maximum grant amount on the basis of the **extension of findings from other grants to this grant**, under the conditions set out in Article 22.5.2.

43.2 Amount to be reduced — Calculation — Procedure

The amount of the reduction will be proportionate to the improper implementation of the action or to the seriousness of the breach.

Before reduction of the grant, the EIT will formally notify a **'pre-information letter'** to the coordinator 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 EIT 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 EIT 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 5.3.4 and 21.4).

If the EIT 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 EIT will recover the difference (see Article 44).

ARTICLE 44 — RECOVERY OF UNDUE AMOUNTS

44.1 Amount to be recovered — Calculation — Procedure

The EIT will — after **termination of the participation of a beneficiary, 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 (including undue amounts paid by the EIT for costs 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 coordinator), the EIT 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 EIT will **recover** the amount:

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

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

(b) Not applicable;

(c) by **taking legal action** (see Article 57).

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 EIT 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/EC²⁶ 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 EIT will formally notify a '**pre-information letter**' to the coordinator:

- 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 coordinator to submit a report on the distribution of payments to the beneficiaries within 30 days of receiving notification, and
- inviting the coordinator to submit observations within 30 days of receiving notification.

If no observations are submitted or the EIT 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 coordinator 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.

²⁶ 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).

If the coordinator does not repay the EIT by the date in the debit note and has not submitted the report on the distribution of payments: the EIT will **recover** the amount set out in the debit note from the coordinator (see below).

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

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

{{{beneficiary's costs declared in the final summary financial statement and approved by the EIT multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned

[plus

its linked third parties' costs declared in the final summary financial statement and approved by the EIT multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned}}

divided by

the EU contribution for the action 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 coordinator}.

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

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

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

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

- (i) not applicable;
- (ii) by **taking legal action** (see Article 57).

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 EIT receives full payment of the amount.

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

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

44.1.3 Recovery of amounts after payment of the balance

If, for a beneficiary, the revised final grant amount (see Article 5.4) is lower than its share of the final grant amount, it must repay the difference to the EIT.

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

{{beneficiary's costs declared in the final summary financial statement and approved by the EIT multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned

[plus

its linked third parties' costs declared in the final summary financial statement and approved by the EIT multiplied by the reimbursement rate set out in Article 5.2 for each linked third party concerned}}

divided by

the EU contribution for the action calculated according to Article 5.3.1}

multiplied by

the final grant amount (see Article 5.3)}.

If the coordinator has not distributed amounts received (see Article 21.7), the EIT will also recover these amounts.

The EIT 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 EIT 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 EIT will **recover** the amount:

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

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

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

- (i) not applicable;
- (ii) by **taking legal action** (see Article 57).

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 EIT 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 AND FINANCIAL PENALTIES

45.1 Conditions

Under Articles 109 and 131(4) of the Financial Regulation No 966/2012, the EIT may impose **administrative** and **financial penalties** if a beneficiary:

- (a) has committed substantial errors, irregularities or fraud or is in serious breach of its obligations under the Agreement or
- (b) has made false declarations about information required under the Agreement or for the submission of the proposal (or has not supplied such information).

Each beneficiary is responsible for paying the financial penalties imposed on it.

Under Article 109(3) of the Financial Regulation No 966/2012, the EIT may — under certain conditions and limits — publish decisions imposing administrative or financial penalties.

45.2 Duration — Amount of penalty — Calculation

Administrative penalties exclude the beneficiary from all contracts and grants financed from the EU or Euratom budget for a maximum of five years from the date the infringement is established by the EIT.

If the beneficiary commits another infringement within five years of the date the first infringement is established, the EIT may extend the exclusion period up to 10 years.

Financial penalties will be between 2% and 10% of the maximum EU contribution indicated, for the beneficiary concerned, in the estimated budget (see Annex 2).

If the beneficiary commits another infringement within five years of the date the first infringement is established, the EIT may increase the rate of financial penalties to between 4% and 20%.

45.3 Procedure

Before applying a penalty, the EIT will formally notify the beneficiary concerned:

- informing it of its intention to impose a penalty, its duration or amount and the reasons why and
- inviting it to submit observations within 30 days.

If the EIT does not receive any observations or decides to impose the penalty despite of observations it has received, it will formally notify **confirmation** of the penalty to the beneficiary concerned and — in case of financial penalties — deduct the penalty from the payment of the balance or formally notify a **debit note**, specifying 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 EIT may **recover** the amount:

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

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

- (b) by **taking legal action** (see Article 57).

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 EIT 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.

SECTION 2 LIABILITY FOR DAMAGES

ARTICLE 46 — LIABILITY FOR DAMAGES

46.1 Liability of the EIT

The EIT 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 EIT 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

46.2.1 Conditions

Except in case of force majeure (see Article 51), the beneficiaries must compensate the EIT 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.

Each beneficiary is responsible for paying the damages claimed from it.

46.2.2 Amount of damages — Calculation

The amount the EIT can claim from a beneficiary will correspond to the damage caused by that beneficiary.

46.2.3 Procedure

Before claiming damages, the EIT will formally notify the beneficiary concerned:

- informing it of its intention to claim damages, the amount and the reasons why and
- inviting it to submit observations within 30 days.

If the EIT does not receive any observations or decides to claim damages despite the observations it has received, it will formally notify **confirmation** of the claim for damages and a **debit note**, specifying 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 EIT may **recover** the amount:

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

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

- (b) by **taking legal action** (see Article 57).

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 EIT 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.

SECTION 3 SUSPENSION AND TERMINATION

ARTICLE 47 — SUSPENSION OF PAYMENT DEADLINE

47.1 Conditions

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

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

47.2 Procedure

The EIT will formally notify the coordinator of the suspension and the reasons why.

The suspension will **take effect** the day notification is sent by the EIT (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 coordinator may request the EIT if the suspension will continue.

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

ARTICLE 48 — SUSPENSION OF PAYMENTS

48.1 Conditions

The EIT may — at any moment — suspend, in whole or in part, the pre-financing payment and interim payments for one or more beneficiaries or the payment of the balance for all beneficiaries, if a beneficiary:

- (a) has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations in the award procedure or under this Agreement or
- (b) 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).

48.2 Procedure

Before suspending payments, the EIT will formally notify the coordinator:

- 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 EIT 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 EIT.

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

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 coordinator must immediately formally notify to the EIT 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 EIT.

Once circumstances allow for implementation to resume, the coordinator must immediately formally notify the EIT 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.

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

49.2 Suspension of the action implementation, by the EIT

49.2.1 Conditions

The EIT may suspend implementation of the action or any part of it:

- (a) if a beneficiary has committed or is suspected of having committed substantial errors, irregularities, fraud or serious breach of obligations in the award procedure or under this Agreement;
- (b) if a beneficiary 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) not applicable.

49.2.2 Procedure

Before suspending implementation of the action, the EIT will formally notify the coordinator:

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

The suspension will **take effect** five days after confirmation notification is received by the coordinator (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 coordinator will be formally notified of the lifting and the Agreement will be **amended** to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the Agreement has already been terminated (see Article 50).

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

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

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

Suspension of the action implementation does not affect the EIT'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 terminate the Agreement.

The coordinator must formally notify termination to the EIT (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 EIT 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 coordinator must — within 60 days from when termination takes effect — submit:

- (i) not applicable;
- (ii) the final report (see Article 20.4).

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

The EIT will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4) on the basis of the reports submitted. Only costs incurred until termination are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

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

After termination, the beneficiaries' obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) 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 coordinator, on request of the beneficiary concerned or on behalf of the other beneficiaries.

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

If the coordinator'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 budget of the beneficiary concerned (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 coordinator. In this case, the request for amendment must propose a new coordinator.

If this information is not given or if the EIT 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 coordinator 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, an overview of the use of resources, the individual financial statement and, if applicable, the certificate on the financial statement (see Article 20.4).

The information in the termination report must also be included in the final report (see Article 20.3).

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

The EIT will **calculate** — on the basis of the periodic reports, the termination report and the report on the distribution of payments — if the (pre-financing) payment received by the beneficiary concerned exceed the beneficiary's EU contribution (calculated by applying the reimbursement rate(s) to the eligible costs declared by the beneficiary and its linked third parties and approved by the EIT). Only costs incurred by the beneficiary concerned until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

- 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 coordinator the amount unduly received. The EIT will formally notify the amount unduly received and request the beneficiary concerned to repay it to the coordinator within 30 days of receiving notification. If it does not repay the coordinator, the EIT will draw upon the Guarantee Fund to pay the coordinator 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 EIT 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 EIT the amount due and the EIT will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44);
 - if the beneficiary concerned is the former coordinator, it must repay the new coordinator the amount unduly received, unless:

- termination takes effect after pre-financing payment and
- the former coordinator has not distributed amounts received as pre-financing (see Article 21.7).

In this case, the EIT will formally notify a **debit note** to the former coordinator. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the EIT the amount due. The EIT will then pay the new coordinator and notify a debit note on behalf of the Guarantee Fund to the former coordinator (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 EIT does not receive the termination report within the deadline (see above), only costs included in the approved final report will be taken into account.

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

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

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 and 40) continue to apply.

50.3 Termination of the Agreement or the participation of one or more beneficiaries, by the EIT

50.3.1 Conditions

The EIT 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 of 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 coordinator (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) not applicable;
- (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 affecting the EU's financial interests;
- (l) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has — in the award procedure or under the Agreement — committed:
 - (i) substantial errors, irregularities, fraud or
 - (ii) serious breach of obligations, including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles;
- (m) a beneficiary 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'**).

50.3.2 Procedure

Before terminating the Agreement or participation of one or more beneficiaries, the EIT will formally notify the coordinator:

- 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 EIT of the measures to ensure compliance with the obligations under the Agreement.

If the EIT does not receive observations or decides to pursue the procedure despite the observations it has received, it will formally notify to the coordinator **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), and (l.ii) above: on the day specified in the notification of the confirmation (see above);
- for terminations under Points (a), (d), (f), (k), (l.i) and (m) above: on the day after the notification of the confirmation is received by the coordinator.

50.3.3 Effects

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

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

- (i) not applicable;
- (ii) a final report (see Article 20.4).

If the Agreement is terminated for breach of the obligation to submit the final report (see Articles 20.8 and 50.3.1(l)), the coordinator may not submit any reports after termination.

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

The EIT will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 21.4) on the basis of the reports submitted. Only costs incurred until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

This does not affect the EIT's right to reduce the grant (see Article 43) or to impose administrative and financial penalties (Article 45).

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

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

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

The coordinator 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 estimated budget of the beneficiary concerned (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 coordinator. In this case the request for amendment must propose a new coordinator, 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, an overview of the use of resources, the individual financial statement and, if applicable, the certificate on the financial statement (see Article 20).

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

The EIT will **calculate** — on the basis of the periodic reports, the termination report and the report on the distribution of payments — if the (pre-financing) payments received by the beneficiary concerned exceed the beneficiary's EU contribution (calculated by applying the reimbursement rate(s) to the eligible costs declared by the beneficiary and its linked third parties and approved by the EIT). Only costs incurred by the beneficiary concerned until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

- 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 coordinator the amount unduly received. The EIT will formally notify the amount unduly received and request the beneficiary concerned to repay it to the coordinator within 30 days of receiving notification. If it does not repay the coordinator, the EIT will draw upon the Guarantee Fund to pay the coordinator 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 EIT 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 EIT the amount due and the EIT will notify a debit note on behalf of the Guarantee Fund to the beneficiary concerned (see Article 44) ;
 - if the beneficiary concerned is the former coordinator, it must repay the new coordinator the amount unduly received, unless:
 - termination takes effect after the final payment and

- the former coordinator has not distributed amounts received as pre-financing payments (see Article 21.7)

In this case, the EIT will formally notify a **debit note** to the former coordinator. If payment is not made by the date in the debit note, the Guarantee Fund will pay to the EIT the amount due. The EIT will then pay the new coordinator and notify a debit note on behalf of the Guarantee Fund to the former coordinator (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 EIT does not receive the termination report within the deadline (see above), only costs included in the approved final report will be taken into account.

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

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

After termination, the concerned beneficiary's obligations (in particular Articles 20, 22, 23, Section 3 of Chapter 4, 36, 37, 38 and 40) 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.

Until the payment of the balance: all communication must be made through the electronic exchange system or electronically in the form of e-mail.

After the payment of the balance: formal notifications must be made by registered post with proof of delivery (‘formal notification on paper’).

If the electronic exchange system is temporarily unavailable, instructions will be given on the EIT website.

52.2 Date of communication

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

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

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

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

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

52.3 Addresses for communication

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

<https://duna.eit.europa.eu>

Formal notifications electronically addressed to the EIT must be sent to the following e-mail address:

EIT-Director@eit.europa.eu.

The EIT will formally notify the coordinator and beneficiaries in advance any changes to this URL.

Formal notifications on paper (only after the payment of the balance) addressed **to the EIT** must be sent to the following address:

Director
European Institute of Innovation and Technology - EIT
Infopark, Building E, Neumann Janos 1
1117 Budapest
Hungary

Formal notifications on paper (only after the payment of the balance) addressed **to the beneficiaries** must be sent to their legal address.

ARTICLE 53 — INTERPRETATION OF THE AGREEMENT

53.1 Precedence of the Terms and Conditions over the Annexes

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

Annex 2 takes precedence over Annex 1.

53.2 Privileges and immunities

Not applicable.

ARTICLE 54 — CALCULATION OF PERIODS, DATES AND DEADLINES

In accordance with Regulation No 1182/71²⁷, 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.

²⁷ 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).

ARTICLE 55 — AMENDMENTS TO THE AGREEMENT

55.1 Conditions

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

Amendments may be requested by any of the parties.

55.2 Procedure

The party requesting an amendment must submit a request for amendment submitted in accordance with Article 52.

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

If a change of coordinator 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 coordinator without its agreement: the opinion of the coordinator (or proof that this opinion has been requested in writing).

The EIT 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 EIT 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) which shall be submitted by the coordinator to the EIT within 180 days after its entry into force (see Article 58).

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 coordinator must — within 30 days — request an amendment to make any changes necessary to ensure proper implementation of the action. This does not affect the EIT'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 coordinator 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.

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).

ARTICLE 57 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES

57.1 Applicable law

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

57.2 Dispute settlement

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

As an exception, if such a dispute is between the EIT and non-EU KIC Partner(s) (except KIC Partners established in an associated country with an association agreement to Horizon 2020 that stipulates sole jurisdiction of the European Court of Justice), the competent Belgian courts have sole jurisdiction.

If a dispute concerns administrative or financial penalties, 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.

ARTICLE 58 — ENTRY INTO FORCE OF THE AGREEMENT

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

SIGNATURES

For the coordinator

For the EIT

Done in English

Done in English

MODEL

Annex 1: Start-up plan

The start-up plan sets out the main activities for a rapid start of the KIC. It **shall include** the following areas and segments of activities, taking into account that each area and segment shall indicate the relevant milestones and deliverables while meeting those presented in the Framework of Guidance (EIT KIC Call 2016)¹ as minimum, and the KIC is asked to develop more specific indicators in its start-up plan to measure progress towards the deliverables.

1.1 Legal readiness

1.1.1 Set up of KIC Legal structures

- Set up necessary KIC legal structures, including KIC Legal Entity, official representative for all contractual relations with the EIT
- Set-up governance arrangements that reflect the knowledge triangle of higher education, business, research and innovation and that integrate a system of checks and balances in line with the principles spelled out in the Framework Partnership Agreement (FPA)².

1.1.2 KIC Partnership agreements

- Conclude participation and internal agreements between KIC LE and KIC Partners, with a view of ensuring a strong commitment by KIC partners, including their financial support.
- Ensure an effective operational structure to deliver the KIC strategy and ensure a gradual, and transparent partner expansion plan
- Establish Internal rules which guarantee transparency

1.2 Operational readiness

1.2.1 Recruitment & appointment of CEO

- Recruit and appoint a full-time CEO with full executive control for the daily operational management of the KIC.

1.2.2 Recruitment & appointment of KIC Core staff (CFO, COO, Thematic Directors, CLC managers)

- Appoint a high quality and diverse management team with strong direction, leadership and executive power over the implementation of the KIC's strategy and business plans
- Recruit other KIC core staff

¹ Framework of Guidance (EIT KIC Call 2016), Innovate ! Join the EIT Community and help Europe advance. European Institute of Innovation and Technology (EIT). 2015, November. Available at : <http://eit.europa.eu/interact/bookshelf/framework-guidance-eit%E2%80%99s-2016-call-kic-proposals>

² EIT Model Framework Partnership Agreement available at : <http://eit.europa.eu/collaborate/2016-call-for-kics>

1.2.3 Set up of operational functions at the KIC LE level

- Design and agree on the practical modalities for implementation of KIC activities.
- Prepare monitoring, reporting and evaluation functions for the KIC Legal Entity

1.2.4 Development and submission of First Business Plan

- Prepare the KIC's integrated portfolio of activities in the first KIC Business Plan (KIC BP), in accordance with the Guidelines provided by the EIT.
- Establish the processes and means to ensure continuous linkages across co-location centres and between all the partners in the KIC and the formation of diverse teams.

1.3 Fostering EIT Identity

1.3.1 KIC's communication plan³

- Develop the KIC's communication policy contributing to the EIT's visibility and identity and based on the EIT Community Brand Book.

1.4 Other activities (optional)

Examples are:

- Design and implementation of initial activities focussing on knowledge triangle integration in the field of higher education, business, research and innovation activities that directly contribute to the rolling-out of the first KIC Business Plan, when justified.
- Develop a policy for the management and exploitation of Intellectual Property (IP), tailored to the specific needs of KIC's thematic area, aligned with the KIC business model and contributing to the KIC's financial sustainability in the medium term.
- Set-up an IP Board to facilitate the formulation of its IP policy.
- Consider steps to develop a strategy for financial sustainability
- Develop a monitoring strategy of activities
- Develop a dissemination plan
- Design specific outreach initiatives, in line with the concept of the 'Regional Innovation Scheme' (RIS).

If necessary to implement the action, the beneficiaries may award subcontracts covering the implementation of certain action tasks. In such cases they have to be described in this start-up plan.

³ Activities and costs thereof funded by the EIT under Communications Support to newly designated KICs cannot be covered under the Start Up Grant Agreement.



ANNEX 2 FOR EIT SUGA 20XX

BUDGET TEMPLATE FOR THE EIT START-UP GRANT
ESTIMATED BUDGET FOR THE ACTION

Estimated eligible ¹ costs (per budget category)										EIT contribution			Additional information					
A. Direct personnel costs					B. Direct costs of subcontracting		D. Other direct costs	E. Indirect costs ²	Total costs	Reimbursement rate %	Maximum EIT contribution ³	Maximum grant amount ⁴		Information for indirect costs : Estimated costs of in-kind contributions not used on premises				
A.1 Employees (or equivalent)		A.2 Natural persons under direct contract			A.3 Seconded persons		A.4 SME owners without salary	A.5 Beneficiaries that are natural persons without salary	D.1 Travel	D.2 Equipment	D.3 Other goods and services	Flat-rate ⁸			g = a+b+c+d+e+f	h	i	j
Form of costs ⁵		Actual	Unit ⁶	Unit ⁷		Actual	Actual	25%	f = 0,25 x (a+b+c+e-k)	k								
		a	Total b	No hours	Total c	d	e											k
1 [short name beneficiary]																		
1. Legal readiness																		
1.1 Set up of KIC Legal structure																		
1.2 KIC Partnership agreements																		
2. Operational readiness																		
2.1 Recruitment & appointment of CEO																		
2.2 Recruitment & appointment of KIC Core staff (CFO, COO, Thematic Directors, CLC managers)																		
2.3 Set up of operational functions at the KIC LE level																		
2.4 Development and submission of First Business Plan																		
3. Fostering EIT Identity																		
3.1 KIC's communication policy.																		
4. Other activities (optional)																		
4.1 Activity																		
4.n Activity n																		
....																		
Total beneficiary 1																		
n [short name beneficiary]																		
1. Legal readiness																		
1.1 Set up of KIC Legal structure																		
1.2 KIC Partnership agreements																		
2. Operational readiness																		
2.1 Recruitment & appointment of CEO																		
2.2 Recruitment & appointment of KIC Core staff (CFO, COO, Thematic Directors, CLC managers)																		
2.3 Set up of operational functions at the KIC LE level																		
2.4 Development and submission of First Business Plan																		
3. Fostering EIT Identity																		
3.1 KIC's communication policy.																		
4. Other activities (optional)																		
4.1 Activity																		
4.n Activity n																		
...																		
Total beneficiary n																		
...																		
Total consortium																		

NB: Only budget areas (1,2,3,4) or segments (e.g.1.1) be applied where costs are budgeted by the beneficiary.

¹ See Article 6 for the eligibility conditions
² The indirect costs covered by the operating grant (received under any EU or Euratom funding programme; see Article 6.5.(b)) are ineligible under the SUGA. Therefore, a beneficiary that receives an operating grant during the action's duration cannot declare indirect costs for the year(s)/reporting period(s) covered by the operating grant (see Article 6.2.E).
³ This is the *theoretical* amount of EU contribution that the system calculates automatically (by multiplying all the budgeted costs by the reimbursement rate). This *theoretical* amount is capped by the 'maximum grant amount' (that the Commission/Agency decided to grant for the action) (see Article 5.1).
⁴ The 'maximum grant amount' is the maximum grant amount decided by the EIT. It normally corresponds to the requested grant, but may be lower.
⁵ See Article 5 for the forms of costs
⁶ Unit : hours worked on the action; costs per unit (hourly rate) : calculated according to beneficiary's usual accounting practice
⁷ See Annex 2a 'Additional information on annex 6 (costs per hour (hourly rate)).
⁸ Flat rate : 25% of eligible direct costs, from which are excluded: direct costs of subcontracting, costs of in-kind contributions not used on premises

ANNEX 3

ACCESSION FORM FOR BENEFICIARIES / COORDINATOR

[Full official name of the beneficiary/coordinator (short name)] [legal form], [official registration No], established in [official address in full] [VAT number], ('the beneficiary' or 'the coordinator'), represented for the purpose of signing this Accession Form by [forename and surname, function],

hereby agrees

to become [*beneficiary*][*coordinator*] ('insert official registration no ..')

in Grant Agreement No [insert agreement number] ('the Agreement')

between [full official name of the coordinator] and the European Institute of Innovation and Technology

for the action entitled 'Start-up Grant for [full name of KIC].

and mandates the coordinator 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 implement the grant in accordance with the Agreement, with all the obligations and conditions it sets out.

SIGNATURE

For the beneficiary/new beneficiary/new coordinator:

[function/forename/surname]

[signature]

Done in [English] on [stamp]

print format A4
landscape



MODEL ANNEX 4a to EIT SUGA 20XX

SUMMARY FINANCIAL STATEMENT FOR THE EIT START-UP GRANT

eligible costs (per budget category/per area/segment)								Receipts		EIT contribution		Additional information
A. Direct personnel costs			B. Direct costs of subcontracting	D. Other direct costs	E. Indirect costs	Total costs	Receipts	Reimbursement rate %	Maximum EIT contribution	Requested EIT contribution	Information for indirect costs :	
Form of costs	A.1 Employees (or equivalent)	A.4 SME owners without salary	A.5 Beneficiaries that are natural persons without salary	D.1 Travel	Flat-rate 25%	g = a+b+c+d+e+f	Receipts of the action, to be reported in the last reporting period, according to Article 5.3.3	h	i	j	k	Costs of in-kind contributions not used on premises
	A.2 Natural persons under direct contract			D.2 Equipment								
	A.3 Seconded persons			D.3 Other goods and services								
	Actual	Unit	Unit	Actual	Actual							
	a	Total b	Total c	d	e	f = 0,25 x (a+b+c+e-l)						l
1. Legal readiness	0	0	0	0	0	0	0	100%	0	0	0	0
1.1 Set up of KIC Legal structure						0	0	100%	0			
1.2 KIC Partnership agreements						0	0	100%	0			
2. Operational readiness	0	0	0	0	0	0	0	100%	0	0	0	0
2.1 Recruitment & appointment of CEO						0	0	100%	0			
2.2 Recruitment & appointment of KIC Core staff (CFO, COO, Thematic Directors, CLC managers)						0	0	100%	0			
2.3 Set up of operational functions at the KIC LE level						0	0	100%	0			
2.4 Development and submission of First Business Plan						0	0	100%	0			
3. Fostering EIT Identity	0	0	0	0	0	0	0	100%	0	0	0	0
3.1 KIC's communication policy						0	0	100%	0			
4. Other activities (optional)	0	0	0	0	0	0	0	100%	0	0	0	0
4.1 Activity						0	0	100%	0			
4.n Activity n						0	0	100%	0			
...						0	0	100%	0			
Total consortium	0	0	0	0	0	0	0		0	0	0	0

NB: Only budget areas (1,2,3,4) or segments (e.g 1.1) be applied where costs are incurred.



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

		Eligible ¹ costs (per budget category/area/segment)							Receipts	EIT contribution			Additional information
		A. Direct personnel costs		B. Direct costs of subcontracting	D. Other direct costs	E. Indirect costs ²	Total costs	Receipts	Reimbursement rate %	Maximum EIT ³ contribution	Requested EIT contribution	Information for indirect costs :	
Form of costs ⁴		A.1 Employees (or equivalent)	A.4 SME owners without salary		D.1 Travel		Flat-rate ⁵	Receipts of the action, to be reported in the last reporting period, according to Article 5.3.3					
		A.2 Natural persons under direct contract	A.5 Beneficiaries that are natural persons without salary		D.2 Equipment								
		A.3 Seconded persons			D.3 Other goods and services								
	Actual	Unit	Unit	Actual	Actual	Flat-rate ⁵							
	a	Total b	No hours	Total c	d	e	f=0,25 x (a+b+ c+e+l)	g= a+b+c+d+e+f	h	i	j	k	l
1. Legal readiness	0	0		0	0	0	0	0	0	100%	0	0	0
1.1 Set up of KIC Legal structure							0	0		100%	0		
1.2 KIC Partnership agreements							0	0		100%	0		
2. Operational readiness	0	0		0	0	0	0	0	0	100%	0	0	0
2.1 Recruitment & appointment of CEO							0	0		100%	0		
2.2 Recruitment & appointment of KIC Core staff (CFO, COO, Thematic Directors, CLC managers)							0	0		100%	0		
2.3 Set up of operational functions at the KIC LE level							0	0		100%	0		
2.4 Development and submission of First Business Plan							0	0		100%	0		
3. Fostering EIT Identity	0	0		0	0	0	0	0	0	100%	0	0	0
3.1 KIC's communication policy							0	0		100%	0		
4. Other activities (optional)	0	0		0	0	0	0	0	0	100%	0	0	0
4.1 Activity							0	0		100%	0		
4.n Activity n							0	0		100%	0		
Total beneficiary	0	0		0	0	0	0	0	0		0	0	0

The beneficiary hereby confirms that:
 The information provided is complete, reliable and true.
 The costs declared are eligible (see Article 6).
 The costs can be substantiated by adequate records and supporting documentation that will be produced upon request or in the context of checks, reviews, audits and investigations (see Articles 17, 18 and 22).
 All the receipts have been declared (see Article 5.3.3).

Ⓞ Please declare all eligible costs, even if they exceed the amounts indicated in the estimated budget (see Annex 2). Only amounts that were declared in your individual financial statements can be taken into account lateron, in order to replace other costs that are found to be ineligible.

¹ See Article 6 for the eligibility conditions

² The indirect costs claimed must be free of any amounts covered by an operating grant (received under any EU or Euratom funding programme; see Article 6.2.E). If you have received an operating grant during this reporting period, you cannot claim any indirect costs.

³ This is the *theoretical* amount of EIT contribution .

⁴ See Article 5 for the form of costs

⁵ Flat rate : 25% of eligible direct costs, from which are excluded: direct costs of subcontracting and costs of in-kind contributions not used on premises

ANNEX 5

MODEL FOR THE CERTIFICATE ON THE FINANCIAL STATEMENTS

- For options [*in italics in square brackets*]: choose the applicable option. Options not chosen should be deleted.
- For fields in [grey in square brackets]: enter the appropriate data

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Terms of Reference for an Independent Report of Factual Findings on costs declared under a Grant Agreement financed under the Horizon 2020 Research and Innovation Framework Programme

This document sets out the 'Terms of Reference (ToR)' under which

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

agrees to engage

[insert legal name of the auditor] ('the Auditor')

to produce an independent report of factual findings ('the Report') concerning the Financial Statement(s)¹ drawn up by the [Beneficiary] for the Horizon 2020 grant agreement [insert number of the grant agreement, title of the action, acronym and duration from/to] ('the Agreement'), and

to issue a Certificate on the Financial Statements' ('CFS') referred to in Article 20.4 of the Agreement based on the compulsory reporting template stipulated by the EIT.

The Agreement has been concluded under the Horizon 2020 Research and Innovation Framework Programme (H2020) between the Beneficiary and the EIT ('the EIT').

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

1.1 Subject of the engagement

The coordinator must submit to the EIT the final report within 60 days following the end of the last reporting period which should include, amongst other documents, a CFS for each beneficiary that requests a total contribution of EUR 325 000 or more, as reimbursement of actual costs and unit costs calculated on the basis of its usual cost accounting practices (see Article 20.4 of the Agreement). The CFS must cover the reporting period of the beneficiary applicable under the SUGA.

The Beneficiary must submit to the coordinator the CFS, if the CFS must be included in the final report according to Article 20.4 of the Agreement..

The CFS is composed of two separate documents:

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

If the CFS must be included in the final report according to Article 20.4 of the Agreement, the request for payment of the balance relating to the Agreement cannot be made without the CFS. However, the

¹ By which costs under the Agreement are declared (see template 'Model Financial Statements' in Annex 4 to the Grant Agreement).

payment for reimbursement of costs covered by the CFS does not preclude the EIT, the European Anti-Fraud Office and the European Court of Auditors from carrying out checks, reviews, audits and investigations in accordance with Article 22 of the Agreement.

1.2 Responsibilities

The *Beneficiary*:

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

The Auditor:

- *[Option 1 by default: is qualified to carry out statutory audits of accounting documents in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC or similar national regulations].*
- *[Option 2 if the Beneficiary has an independent Public Officer: is a competent and independent Public Officer for which the relevant national authorities have established the legal capacity to audit the Beneficiary].*
- *[Option 3 if the Beneficiary is an international organisation: is an [internal] [external] auditor in accordance with the internal financial regulations and procedures of the international organisation].*

The Auditor:

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

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

1.3 Applicable Standards

The Auditor must comply with these Terms of Reference and with²:

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

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

1.4 Reporting

The Report must be written in the language of the Agreement (see Article 20.7).

Under Article 22 of the Agreement, the EIT, the European Anti-Fraud Office and the Court of Auditors have the right to audit any work that is carried out under the action and for which costs are declared from the *European Union* budget. This includes work related to this engagement. The Auditor must provide access to all working papers (e.g. recalculation of hourly rates, verification of the time declared for the action) related to this assignment if the EIT, the European Anti-Fraud Office or the European Court of Auditors requests them.

1.5 Timing

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

1.6 Other terms

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

[legal name of the Auditor]

[legal name of the [Beneficiary]

[name & function of authorised representative]

[name & function of authorised representative]

[dd Month yyyy]

[dd Month yyyy]

Signature of the Auditor

Signature of the [Beneficiary]

² Supreme Audit Institutions applying INTOSAI-standards may carry out the Procedures according to the corresponding International Standards of Supreme Audit Institutions and code of ethics issued by INTOSAI instead of the International Standard on Related Services ('ISRS') 4400 and the Code of Ethics for Professional Accountants issued by the IAASB and the IESBA.

Independent Report of Factual Findings on costs declared under Horizon 2020 Research and Innovation Framework Programme

(To be printed on the Auditor's letterhead)

To
[name of contact person(s)], [Position]
[Beneficiary's name]
[Address]
[dd Month yyyy]

Dear [Name of contact person(s)],

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

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

we

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

established at

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

represented by

[name and function of an authorised representative],

have carried out the procedures agreed with you regarding the costs declared in the Financial Statement(s)³ of the *Beneficiary* concerning the grant agreement

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

with a total cost declared of
[total amount] EUR,

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

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

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

The Report

³ By which the Beneficiary declares costs under the Agreement (see template 'Model Financial Statement' in Annex 4 to the Agreement).

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

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

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

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

Not applicable Findings

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

Explanation (to be removed from the Report):

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

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

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

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

....

Exceptions

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

Explanation (to be removed from the Report):

- If the Auditor was not able to successfully complete a procedure requested, it must be marked as 'E' ('Exception') in the corresponding row on the right-hand column of the table. The reason such as the inability to reconcile key information or the unavailability of data that prevents the Auditor from carrying*

out the Procedure must be indicated below.

- If the Auditor cannot corroborate a standard finding after having carried out the corresponding procedure, it must also be marked as 'E' ('Exception') and, where possible, the reasons why the Finding was not fulfilled and its possible impact must be explained here below.

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

....

Example (to be removed from the Report):

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

Further Remarks

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

Example (to be removed from the Report):

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

Use of this Report

This Report may be used only for the purpose described in the above objective. It was prepared solely for the confidential use of the *Beneficiary* and the *EIT*, and only to be submitted to the *EIT* in connection with the requirements set out in Article 20.4 of the Agreement. The Report may not be used by the *Beneficiary* or by the *EIT* for any other purpose, nor may it be distributed to any other parties. The *EIT* may only disclose the Report to authorised parties, in particular to the European Anti-Fraud Office (OLAF) and the European Court of Auditors.

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

There was no conflict of interest⁴ between the Auditor and the *Beneficiary* in establishing this Report. The total fee paid to the Auditor for providing the Report was EUR _____ (including EUR _____ of deductible VAT).

⁴ A conflict of interest arises when the Auditor's objectivity to establish the certificate is compromised in fact or in appearance when the Auditor for instance:

- was involved in the preparation of the Financial Statements;
- stands to benefit directly should the certificate be accepted;
- has a close relationship with any person representing the beneficiary;

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

[legal name of the Auditor]

[name and function of an authorised representative]

[dd Month yyyy]

Signature of the Auditor

MODEL

-
- is a director, trustee or partner of the beneficiary; or
 - is in any other situation that compromises his or her independence or ability to establish the certificate impartially.

MODEL

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

The EIT reserves the right to i) provide the auditor with additional guidance regarding the procedures to be followed or the facts to be ascertained and the way in which to present them (this may include sample coverage and findings) or to ii) change the procedures, by notifying the Beneficiary in writing. The procedures carried out by the auditor to confirm the standard factual finding are listed in the table below.

If this certificate relates to a Linked Third Party, any reference here below to ‘the Beneficiary’ is to be considered as a reference to ‘the Linked Third Party’.

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

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

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
A	ACTUAL PERSONNEL COSTS AND UNIT COSTS CALCULATED BY THE BENEFICIARY IN ACCORDANCE WITH ITS USUAL COST ACCOUNTING PRACTICE		

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p>The Auditor draws a sample of persons whose costs were declared in the Financial Statement(s) to carry out the procedures indicated in the consecutive points of this section A.</p> <p><i>(The sample should be selected randomly so that it is representative. Full coverage is required if there are fewer than 10 people (including employees, natural persons working under a direct contract and personnel seconded by a third party), otherwise the sample should have a minimum of 10 people, or 10% of the total, whichever number is the highest)</i></p> <p>The Auditor sampled [] people out of the total of [] people.</p>		
A.1	<p>PERSONNEL COSTS</p> <p><u>For the persons included in the sample and working under an employment contract or equivalent act (general procedures for individual actual personnel costs and personnel costs declared as unit costs)</u></p> <p>To confirm standard factual findings 1-5 listed in the next column, the Auditor reviewed following information/documents provided by the Beneficiary:</p> <ul style="list-style-type: none"> ○ a list of the persons included in the sample indicating the period(s) during which they worked for the action, their position (classification or category) and type of contract; ○ the payslips of the employees included in the sample; ○ reconciliation of the personnel costs declared in the Financial Statement(s) with the accounting system (project accounting and general ledger) and payroll system; ○ information concerning the employment status and employment conditions of personnel included in the sample, in particular their employment contracts or equivalent; ○ the Beneficiary's usual policy regarding payroll matters (e.g. salary policy, overtime policy, variable pay); 	<p>1) The employees were i) directly hired by the Beneficiary in accordance with its national legislation, ii) under the Beneficiary's sole technical supervision and responsibility and iii) remunerated in accordance with the Beneficiary's usual practices.</p> <p>2) Personnel costs were recorded in the Beneficiary's accounts/payroll system.</p> <p>3) Costs were adequately supported and reconciled with the accounts and payroll</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<ul style="list-style-type: none"> ○ applicable national law on taxes, labour and social security and ○ any other document that supports the personnel costs declared. <p>The Auditor also verified the eligibility of all components of the retribution (see Article 6 GA) and recalculated the personnel costs for employees included in the sample.</p>	<p>records.</p> <p>4) Personnel costs did not contain any ineligible elements.</p> <p>5) There were no discrepancies between the personnel costs charged to the action and the costs recalculated by the Auditor.</p>	
	<p><i>Further procedures if 'additional remuneration' is paid</i></p> <p>To confirm standard factual findings 6-9 listed in the next column, the Auditor:</p> <ul style="list-style-type: none"> ○ reviewed relevant documents provided by the Beneficiary (legal form, legal/statutory obligations, the Beneficiary's usual policy on additional remuneration, criteria used for its calculation...); ○ recalculated the amount of additional remuneration eligible for the action based on the supporting documents received (full-time or part-time work, exclusive or non-exclusive dedication to the action, etc.) to arrive at the applicable FTE/year and pro-rata rate (see data collected in the course of carrying out the procedures under A.2 'Productive hours' and A.4 'Time recording system'). 	<p>6) The Beneficiary paying "additional remuneration" was a non-profit legal entity.</p> <p>7) The amount of additional remuneration paid corresponded to the Beneficiary's usual remuneration practices and was consistently paid whenever the same kind of work or expertise was required.</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p><i>IF ANY PART OF THE REMUNERATION PAID TO THE EMPLOYEE IS NOT MANDATORY ACCORDING TO THE NATIONAL LAW OR THE EMPLOYMENT CONTRACT ("ADDITIONAL REMUNERATION") AND IS ELIGIBLE UNDER THE PROVISIONS OF ARTICLE 6.2.A.1, THIS CAN BE CHARGED AS ELIGIBLE COST TO THE ACTION UP TO THE FOLLOWING AMOUNT:</i></p> <p><i>(A) IF THE PERSON WORKS FULL TIME AND EXCLUSIVELY ON THE ACTION DURING THE FULL YEAR: UP TO EUR 8 000/YEAR;</i></p> <p><i>(B) IF THE PERSON WORKS EXCLUSIVELY ON THE ACTION BUT NOT FULL-TIME OR NOT FOR THE FULL YEAR: UP TO THE CORRESPONDING PRO-RATA AMOUNT OF EUR 8 000, OR</i></p> <p><i>(C) IF THE PERSON DOES NOT WORK EXCLUSIVELY ON THE ACTION: UP TO A PRO-RATA AMOUNT CALCULATED IN ACCORDANCE TO ARTICLE 6.2.A.1.</i></p>	<p>8) The criteria used to calculate the additional remuneration were objective and generally applied by the Beneficiary regardless of the source of funding used.</p> <p>9) The amount of additional remuneration included in the personnel costs charged to the action was capped at EUR 8,000 per FTE/year (up to the equivalent pro-rata amount if the person did not work on the action full-time during the year or did not work exclusively on the action).</p>	
	<p><i>Additional procedures in case "unit costs calculated by the Beneficiary in accordance with its usual cost accounting practices" is applied:</i></p> <p>Apart from carrying out the procedures indicated above to confirm standard factual findings 1-5 and, if applicable, also 6-9, the Auditor carried out following procedures to confirm standard factual findings 10-13 listed in the next column:</p> <ul style="list-style-type: none"> ○ obtained a description of the Beneficiary's usual cost accounting practice to calculate unit 	<p>10) The personnel costs included in the Financial Statement were calculated in accordance with the Beneficiary's usual cost accounting practice. This methodology was consistently used in all H2020 actions.</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p>costs;</p> <ul style="list-style-type: none"> ○ reviewed whether the Beneficiary's usual cost accounting practice was applied for the Financial Statements subject of the present CFS; ○ verified the employees included in the sample were charged under the correct category (in accordance with the criteria used by the Beneficiary to establish personnel categories) by reviewing the contract/HR-record or analytical accounting records; ○ verified that there is no difference between the total amount of personnel costs used in calculating the cost per unit and the total amount of personnel costs recorded in the statutory accounts; ○ verified whether actual personnel costs were adjusted on the basis of budgeted or estimated elements and, if so, verified whether those elements used are actually relevant for the calculation, objective and supported by documents. 	<p>11) The employees were charged under the correct category.</p> <p>12) Total personnel costs used in calculating the unit costs were consistent with the expenses recorded in the statutory accounts.</p> <p>13) Any estimated or budgeted element used by the Beneficiary in its unit-cost calculation were relevant for calculating personnel costs and corresponded to objective and verifiable information.</p>	
	<p><u>For natural persons included in the sample and working with the Beneficiary under a direct contract other than an employment contract, such as consultants (no subcontractors).</u></p> <p>To confirm standard factual findings 14-18 listed in the next column the Auditor reviewed following information/documents provided by the Beneficiary:</p> <ul style="list-style-type: none"> ○ the contracts, especially the cost, contract duration, work description, place of work, ownership of the results and reporting obligations to the Beneficiary; 	<p>14) The natural persons reported to the Beneficiary (worked under the Beneficiary's instructions).</p> <p>15) They worked on the Beneficiary's premises (unless otherwise agreed with the Beneficiary).</p>	

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

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

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p>If the Beneficiary applied method B, the auditor verified that the correctness in which the total number of hours worked was calculated and that the contracts specified the annual workable hours.</p> <p>If the Beneficiary applied method C, the auditor verified that the ‘annual productive hours’ applied when calculating the hourly rate were equivalent to at least 90 % of the ‘standard annual workable hours’. The Auditor can only do this if the calculation of the standard annual workable hours can be supported by records, such as national legislation, labour agreements, and contracts.</p> <p><i>BENEFICIARY’S PRODUCTIVE HOURS’ FOR PERSONS WORKING FULL TIME SHALL BE ONE OF THE FOLLOWING METHODS:</i></p> <p>A. 1720 ANNUAL PRODUCTIVE HOURS (PRO-RATA FOR PERSONS NOT WORKING FULL-TIME)</p> <p>B. THE TOTAL NUMBER OF HOURS WORKED BY THE PERSON FOR THE BENEFICIARY IN THE YEAR (THIS METHOD IS ALSO REFERRED TO AS ‘TOTAL NUMBER OF HOURS WORKED’ IN THE NEXT COLUMN). THE CALCULATION OF THE TOTAL NUMBER OF HOURS WORKED WAS DONE AS FOLLOWS: ANNUAL WORKABLE HOURS OF THE PERSON ACCORDING TO THE EMPLOYMENT CONTRACT, APPLICABLE LABOUR AGREEMENT OR NATIONAL LAW PLUS OVERTIME WORKED MINUS ABSENCES (SUCH AS SICK LEAVE OR SPECIAL LEAVE).</p> <p>C. THE STANDARD NUMBER OF ANNUAL HOURS GENERALLY APPLIED BY THE BENEFICIARY FOR ITS PERSONNEL IN ACCORDANCE WITH ITS USUAL COST ACCOUNTING PRACTICES (THIS METHOD IS ALSO REFERRED TO AS ‘TOTAL</p>	<p>24) Productive hours were calculated annually.</p> <p>25) For employees not working full-time the full-time equivalent (FTE) ratio was correctly applied.</p> <p><i>If the Beneficiary applied method B.</i></p> <p>26) The calculation of the number of ‘annual workable hours’, overtime and absences was verifiable based on the documents provided by the Beneficiary.</p> <p><i>If the Beneficiary applied method C.</i></p> <p>27) The calculation of the number of ‘standard annual workable hours’ was verifiable based on the documents provided by the Beneficiary.</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p><i>ANNUAL PRODUCTIVE HOURS' IN THE NEXT COLUMN). THIS NUMBER MUST BE AT LEAST 90% OF THE STANDARD ANNUAL WORKABLE HOURS.</i></p> <p><i>'ANNUAL WORKABLE HOURS' MEANS THE PERIOD DURING WHICH THE PERSONNEL MUST BE WORKING, AT THE EMPLOYER'S DISPOSAL AND CARRYING OUT HIS/HER ACTIVITY OR DUTIES UNDER THE EMPLOYMENT CONTRACT, APPLICABLE COLLECTIVE LABOUR AGREEMENT OR NATIONAL WORKING TIME LEGISLATION.</i></p>	<p>28) The 'annual productive hours' used for calculating the hourly rate were consistent with the usual cost accounting practices of the Beneficiary and were equivalent to at least 90 % of the 'annual workable hours'.</p>	
<p>A.3</p>	<p>HOURLY PERSONNEL RATES</p> <p><u>l) For unit costs calculated in accordance to the Beneficiary's usual cost accounting practice (unit costs):</u></p> <p>If the Beneficiary has a "Certificate on Methodology to calculate unit costs " (CoMUC) approved by the Commission, the Beneficiary provides the Auditor with a description of the approved methodology and the Commission's letter of acceptance. The Auditor verified that the Beneficiary has indeed used the methodology approved. If so, no further verification is necessary.</p> <p>If the Beneficiary does not have a "Certificate on Methodology" (CoMUC) approved by the Commission, or if the methodology approved was not applied, then the Auditor:</p> <ul style="list-style-type: none"> ○ reviewed the documentation provided by the Beneficiary, including manuals and internal guidelines that explain how to calculate hourly rates; ○ recalculated the unit costs (hourly rates) of staff included in the sample following the results of the procedures carried out in A.1 and A.2. 	<p>29) The Beneficiary applied [<i>choose one option and delete the other</i>]:</p> <p>[Option I: "Unit costs (hourly rates) were calculated in accordance with the Beneficiary's usual cost accounting practices"]</p> <p>[Option II: Individual hourly rates were applied]</p> <p><i>For option I concerning unit costs and if the Beneficiary applies the methodology approved by the Commission (CoMUC):</i></p> <p>30) The Beneficiary used the Commission-approved metho-</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p><u>II) For individual hourly rates:</u></p> <p>The Auditor:</p> <ul style="list-style-type: none"> ○ reviewed the documentation provided by the Beneficiary, including manuals and internal guidelines that explain how to calculate hourly rates; ○ recalculated the hourly rates of staff included in the sample following the results of the procedures carried out in A.1 and A.2. <p><i>“UNIT COSTS CALCULATED BY THE BENEFICIARY IN ACCORDANCE WITH ITS USUAL COST ACCOUNTING PRACTICES”:</i> <i>IT IS CALCULATED BY DIVIDING THE TOTAL AMOUNT OF PERSONNEL COSTS OF THE CATEGORY TO WHICH THE EMPLOYEE BELONGS VERIFIED IN LINE WITH PROCEDURE A.1 BY THE NUMBER OF FTE AND THE ANNUAL TOTAL PRODUCTIVE HOURS OF THE SAME CATEGORY CALCULATED BY THE BENEFICIARY IN ACCORDANCE WITH PROCEDURE A.2.</i></p> <p><i>HOURLY RATE FOR INDIVIDUAL ACTUAL PERSONAL COSTS:</i> <i>IT IS CALCULATED BY DIVIDING THE TOTAL AMOUNT OF PERSONNEL COSTS OF AN EMPLOYEE VERIFIED IN LINE WITH PROCEDURE A.1 BY THE NUMBER OF ANNUAL PRODUCTIVE HOURS VERIFIED IN LINE WITH PROCEDURE A.2.</i></p>	<p>dology to calculate hourly rates. It corresponded to the organisation's usual cost accounting practices and was applied consistently for all activities irrespective of the source of funding.</p> <p><i>For option I concerning unit costs and if the Beneficiary applies a methodology not approved by the Commission:</i></p> <p>31) The unit costs re-calculated by the Auditor were the same as the rates applied by the Beneficiary.</p> <p><i>For option II concerning individual hourly rates:</i></p> <p>32) The individual rates re-calculated by the Auditor were the same as the rates applied by the Beneficiary.</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
A.4	<p>TIME RECORDING SYSTEM</p> <p>To verify that the time recording system ensures the fulfilment of all minimum requirements and that the hours declared for the action were correct, accurate and properly authorised and supported by documentation, the Auditor made the following checks for the persons included in the sample that declare time as worked for the action on the basis of time records:</p> <ul style="list-style-type: none"> ○ description of the time recording system provided by the Beneficiary (registration, authorisation, processing in the HR-system); ○ its actual implementation; ○ time records were signed at least monthly by the employees (on paper or electronically) and authorised by the project manager or another manager; ○ the hours declared were worked within the project period; ○ there were no hours declared as worked for the action if HR-records showed absence due to holidays or sickness (further cross-checks with travels are carried out in B.1 below) ; ○ the hours charged to the action matched those in the time recording system. <p><i>ONLY THE HOURS WORKED ON THE ACTION CAN BE CHARGED. ALL WORKING TIME TO BE CHARGED SHOULD BE RECORDED THROUGHOUT THE DURATION OF THE PROJECT, ADEQUATELY SUPPORTED BY EVIDENCE OF THEIR REALITY AND RELIABILITY (SEE SPECIFIC PROVISIONS BELOW FOR PERSONS WORKING EXCLUSIVELY FOR THE ACTION WITHOUT TIME RECORDS).</i></p>	<p>33) All persons recorded their time dedicated to the action on a daily/ weekly/ monthly basis using a paper/computer-based system. <i>(delete the answers that are not applicable)</i></p> <p>34) Their time-records were authorised at least monthly by the project manager or other superior.</p> <p>35) Hours declared were worked within the project period and were consistent with the presences/absences recorded in HR-records.</p> <p>36) There were no discrepancies between the number of hours charged to the action and the number of hours recorded.</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p><u>If the persons are working exclusively for the action and without time records</u></p> <p>For the persons selected that worked exclusively for the action without time records, the Auditor verified evidence available demonstrating that they were in reality exclusively dedicated to the action and that the Beneficiary signed a declaration confirming that they have worked exclusively for the action.</p>	<p>37) The exclusive dedication is supported by a declaration signed by the Beneficiary's and by any other evidence gathered.</p>	
B	COSTS OF SUBCONTRACTING		
B.1	<p>The Auditor obtained the detail/breakdown of subcontracting costs and sampled _____ cost items selected randomly (<i>full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest</i>).</p> <p>To confirm standard factual findings 38-42 listed in the next column, the Auditor reviewed the following for the items included in the sample:</p> <ul style="list-style-type: none"> ○ the use of subcontractors was foreseen in Annex 1; ○ subcontracting costs were declared in the subcontracting category of the Financial Statement; ○ supporting documents on the selection and award procedure were followed; ○ the Beneficiary ensured best value for money (key elements to appreciate the respect of this principle are the award of the subcontract to the bid offering best price-quality ratio, under conditions of transparency and equal treatment. In case an existing framework contract was used the Beneficiary ensured it was established on the basis of the principle 	<p>38) The use of claimed subcontracting costs was foreseen in Annex 1 and costs were declared in the Financial Statements under the subcontracting category.</p> <p>39) There were documents of requests to different providers, different offers and assessment of the offers before selection of the provider in line with internal procedures and procurement rules. Subcontracts were awarded in accordance with the principle</p>	

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
	<p>of best value for money under conditions of transparency and equal treatment).</p> <ul style="list-style-type: none"> o In case subcontracts above 60 000 EUR, three quotes were requested as a minimum by the Beneficiary <p>In particular,</p> <ul style="list-style-type: none"> i. if the Beneficiary acted as a contracting authority within the meaning of Directive 2004/18/EC or of Directive 2004/17/EC, the Auditor verified that the applicable national law on public procurement was followed and that the subcontracting complied with the Terms and Conditions of the Agreement. ii. if the Beneficiary did not fall under the above-mentioned category the Auditor verified that the Beneficiary followed their usual procurement rules and respected the Terms and Conditions of the Agreement.. <p>For the items included in the sample the Auditor also verified that:</p> <ul style="list-style-type: none"> o the subcontracts were not awarded to other Beneficiaries in the consortium; o there were signed agreements between the Beneficiary and the subcontractor; o there was evidence that the services were provided by subcontractor; 	<p>of best value for money.</p> <p><i>(When different offers were not collected the Auditor explains the reasons provided by the Beneficiary under the caption "Exceptions" of the Report. The EIT will analyse this information to evaluate whether these costs might be accepted as eligible)</i></p> <p>40) The subcontracts were not awarded to other Beneficiaries of the consortium.</p> <p>41) All subcontracts were supported by signed agreements between the Beneficiary and the subcontractor.</p> <p>42) There was evidence that the services were provided by the subcontractors.</p>	
C	COSTS OF PROVIDING FINANCIAL SUPPORT TO THIRD PARTIES		

Ref	Procedures	Standard factual finding	Result (C / E / N.A.)
C.1	<p>The Auditor obtained the detail/breakdown of the costs of providing financial support to third parties and sampled cost items selected randomly (full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest).</p> <p>The Auditor verified that the following minimum conditions were met:</p> <ul style="list-style-type: none"> a) the maximum amount of financial support for each third party did not exceed EUR 60 000, unless explicitly mentioned in Annex 1; b) the financial support to third parties was agreed in Annex 1 of the Agreement and the other provisions on financial support to third parties included in Annex 1 were respected. 	43) All minimum conditions were met	

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

	<ul style="list-style-type: none"> ○ the assets were acquired in conformity with the Beneficiary's internal guidelines and procedures; ○ they were correctly allocated to the action (with supporting documents such as delivery note invoice or any other proof demonstrating the link to the action) ○ they were entered in the accounting system; ○ the extent to which the assets were used for the action (as a percentage) was supported by reliable documentation (e.g. usage overview table); <p>The Auditor recalculated the depreciation costs and verified that they were in line with the applicable rules in the Beneficiary's country and with the Beneficiary's usual accounting policy (e.g. depreciation calculated on the acquisition value).</p> <p>The Auditor verified that no ineligible costs such as deductible VAT, exchange rate losses, excessive or reckless expenditure were declared (see Article 6.5 GA).</p>	50) The asset charged to the action was traceable to the accounting records and the underlying documents.	
		51) The depreciation method used to charge the asset to the action was in line with the applicable rules of the Beneficiary's country and the Beneficiary's usual accounting policy.	
		52) The amount charged corresponded to the actual usage for the action.	
		53) No ineligible costs or excessive or reckless expenditure were declared.	
D.3	<p>COSTS OF OTHER GOODS AND SERVICES</p> <p>The Auditor sampled [redacted] cost items selected randomly (full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest).</p> <p>For the purchase of goods, works or services included in the sample the Auditor verified that:</p> <ul style="list-style-type: none"> ○ the contracts did not cover tasks described in Annex 1; ○ they were correctly identified, allocated to the proper action, entered in the accounting 	54) Contracts for works or services did not cover tasks described in Annex 1.	
		55) Costs were allocated to the correct action and the goods were not placed in the inventory of durable equipment.	

	<p>system (traceable to underlying documents such as purchase orders, invoices and accounting);</p> <ul style="list-style-type: none"> ○ the goods were not placed in the inventory of durable equipment; ○ the costs charged to the action were accounted in line with the Beneficiary's usual accounting practices; ○ no ineligible costs or excessive or reckless expenditure were declared (see Article 6 GA). <p>In addition, the Auditor verified that these goods and services were acquired in conformity with the Beneficiary's internal guidelines and procedures, in particular:</p> <ul style="list-style-type: none"> ○ if Beneficiary acted as a contracting authority within the meaning of Directive 2004/18/EC or of Directive 2004/17/EC, the Auditor verified that the applicable national law on public procurement was followed and that the procurement contract complied with the Terms and Conditions of the Agreement. ○ if the Beneficiary did not fall into the category above, the Auditor verified that the Beneficiary followed their usual procurement rules and respected the Terms and Conditions of the Agreement. <p>For the items included in the sample the Auditor also verified that:</p> <ul style="list-style-type: none"> ○ the Beneficiary ensured best value for money (key elements to appreciate the respect of this principle are the award of the contract to the bid offering best price-quality ratio, under conditions of transparency and equal treatment. In case an existing framework contract was used the Auditor also verified that the Beneficiary ensured it was established on the basis of the principle of best value for money under conditions of transparency and equal treatment); <p><i>SUCH GOODS AND SERVICES INCLUDE, FOR INSTANCE, CONSUMABLES AND SUPPLIES, DISSEMINATION (INCLUDING OPEN ACCESS), PROTECTION OF RESULTS, SPECIFIC EVALUATION OF THE ACTION IF IT IS REQUIRED BY THE</i></p>	<p>56) The costs were charged in line with the Beneficiary's accounting policy and were adequately supported.</p>	
		<p>57) No ineligible costs or excessive or reckless expenditure were declared. For internal invoices/charges only the cost element was charged, without any mark-ups.</p>	
		<p>58) Procurement rules, principles and guides were followed. There were documents of requests to different providers, different offers and assessment of the offers before selection of the provider in line with internal procedures and procurement rules. The purchases were made in accordance with the principle of best value for money.</p> <p><i>(When different offers were not collected the Auditor explains the reasons provided by the Beneficiary under the caption</i></p>	

	<p>AGREEMENT, CERTIFICATES ON THE FINANCIAL STATEMENTS IF THEY ARE REQUIRED BY THE AGREEMENT AND CERTIFICATES ON THE METHODOLOGY, TRANSLATIONS, REPRODUCTION.</p>	<p>"Exceptions" of the Report. The EIT will analyse this information to evaluate whether these costs might be accepted as eligible)</p>	
D.4	<p>AGGREGATED CAPITALISED AND OPERATING COSTS OF RESEARCH INFRASTRUCTURE</p> <p>The Auditor ensured the existence of a positive ex-ante assessment (issued by the EC Services) of the cost accounting methodology of the Beneficiary allowing it to apply the guidelines on direct costing for large research infrastructures in Horizon 2020.</p> <p><i>In the cases that a positive ex-ante assessment has been issued</i> (see the standard factual findings 59-60 on the next column), The Auditor ensured that the beneficiary has applied consistently the methodology that is explained and approved in the positive ex ante assessment;</p> <p><i>In the cases that a positive ex-ante assessment has NOT been issued</i> (see the standard factual findings 61 on the next column), The Auditor verified that no costs of Large Research Infrastructure have been charged as direct costs in any costs category;</p> <p><i>In the cases that a draft ex-ante assessment report has been issued with recommendation for further changes</i> (see the standard factual findings 61 on the next column),</p> <ul style="list-style-type: none"> The Auditor followed the same procedure as above (when a positive ex-ante assessment has NOT yet been issued) and paid particular attention (testing reinforced) to the cost items for which the draft ex-ante assessment either rejected the inclusion as direct costs for Large 	<p>59) The costs declared as direct costs for Large Research Infrastructures (in the appropriate line of the Financial Statement) comply with the methodology described in the positive ex-ante assessment report.</p> <p>60) Any difference between the methodology applied and the one positively assessed was extensively described and adjusted accordingly.</p> <p>61) The direct costs declared were free from any indirect costs items related to the Large Research Infrastructure.</p>	

	Research Infrastructures or issued recommendations.		
E	USE OF EXCHANGE RATES		
E.1	<p>a) For Beneficiaries with accounts established in a currency other than euros</p> <p>The Auditor sampled <input type="text"/> cost items selected randomly and verified that the exchange rates used for converting other currencies into euros were in accordance with the following rules established in the Agreement (full coverage is required if there are fewer than 10 items, otherwise the sample should have a minimum of 10 item, or 10% of the total, whichever number is highest):</p> <p><i>COSTS INCURRED IN ANOTHER CURRENCY SHALL BE CONVERTED INTO EURO AT THE AVERAGE OF THE DAILY EXCHANGE RATES PUBLISHED IN THE C SERIES OF OFFICIAL JOURNAL OF THE EUROPEAN UNION (https://www.ecb.int/stats/exchange/eurofxref/html/index.en.html), DETERMINED OVER THE CORRESPONDING REPORTING PERIOD.</i></p> <p><i>IF NO DAILY EURO EXCHANGE RATE IS PUBLISHED IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION FOR THE CURRENCY IN QUESTION, CONVERSION SHALL BE MADE AT THE AVERAGE OF THE MONTHLY ACCOUNTING RATES ESTABLISHED BY THE COMMISSION AND PUBLISHED ON ITS WEBSITE (http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm), DETERMINED OVER THE CORRESPONDING REPORTING PERIOD.</i></p>	62) The exchange rates used to convert other currencies into Euros were in accordance with the rules established of the Grant Agreement and there was no difference in the final figures.	

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

[name and function of an authorised representative]

[dd Month yyyy]

<Signature of the Auditor>

**List of third parties linked to the Coordinator or Partners
in accordance with Article 14 of the SUGA**

Full official name of the linked third party	Short name	Status of the entity (affiliated entity or third party with a legal link)	Nature of affiliation ¹ or nature of legal link with the third party	Legal form	SME ²	AREA ³	Website (if available)	Official address in full	VAT number	Coordinator or Partner to which the third party is linked	Eligibility period (start)	Eligibility period (end)

¹ 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.

'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.

² Please refer to the definition of the EC: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm

³ Either "Business", "Cities, Regions, NGOs", "Research", "Higher Education"