Innovation and Networks Executive Agency

Department C - Connecting Europe Facility (CEF)

GRANT AGREEMENT
UNDER THE CONNECTING EUROPE FACILITY (CEF) – WiFi4EU

AGREEMENT No INEA/CEF/WiFi4EU/ 4-2020/003904-053311

The **Innovation and Networks Executive Agency (INEA)** ("the Agency"), under the powers delegated by the European Commission ("the Commission"), represented for the purposes of signature of this Agreement by Head of Department C, Andreas Boschen

on the one part,

and

MUNICIPALITY: Candelaria
Avenida La Constitución, 7
38530, Candelaria, ESPAÑA
represented for the purposes of signature of this Agreement by María Concepción Brito Núñez

hereinafter referred to as “beneficiary” for the purposes of this Agreement,

on the other part,

HAVE AGREED

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

Annex I Description of the action
Annex II General Conditions (hereinafter referred to as “the General Conditions”)

which form an integral part of this Agreement, hereinafter referred to as "the Agreement".

The terms set out in the Special Conditions shall take precedence over those set out in the Annexes.

The terms of Annex II "General Conditions" shall take precedence over the other Annex.

SPECIAL CONDITIONS

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ARTICLE 1 – SUBJECT MATTER OF THE AGREEMENT

1.1 The Commission has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and Annex I to the Agreement, for the action entitled " WiFi4EU Promotion of internet connectivity in local communities" ("the action"), in Candelaria , action number **4-2020/003904-053311** as described in Annex I (description of the action).

With the signature of the Agreement, the beneficiary accepts the grant and agrees to implement the action, acting on its own responsibility.

1.2 To implement the action, the beneficiary shall select a Wi-Fi installation company as a contractor in the meaning of Article II.9. The Wi-Fi installation company shall register on the WiFi4EU portal available at https://www.wifi4eu.eu/. The beneficiary undertakes to transfer the obligations descending from this Agreement onto the Wi-Fi installation company. In particular, in addition to Article II.9.4 the beneficiary shall ensure that the following conditions are applicable also to the Wi-Fi installation company:

a) the obligation to respect the technical requirements specified in Annex I.

b) the obligation to submit the declaration and the additional information foreseen in Article 4.1(a).

1.3 The beneficiary shall retain sole responsibility for carrying out the action and for the compliance with the provisions of the Agreement. The beneficiary shall ensure that the contract(s) signed with the Wi-Fi installation company for the implementation of this action contains provisions stipulating that the Wi-Fi installation company has no rights vis-à-vis the Agency under the Agreement.

In case of non-compliance with the terms and conditions of this Agreement, the Agency reserves itself the right to recover the amount unduly paid directly from the beneficiary, in line with Article II.26.

ARTICLE 2 – ENTRY INTO FORCE OF THE AGREEMENT AND DURATION OF THE ACTION

2.1 The Agreement shall enter into force on the date on which the last party signs.

2.2 The beneficiary shall have a maximum of 18 months from the date of entry into force of the Grant Agreement to finalise the Wi-Fi installation in line with Annex I and submit the declaration foreseen in Article 4.1 (b). This maximum deadline may not be extended except in cases of 'force majeure' as defined in Article II.14.1.

ARTICLE 3 - MAXIMUM AMOUNT AND FORM OF THE GRANT

The grant for the action shall be a maximum amount of EUR 15,000 and take the form of a lump sum contribution ("the voucher").

ARTICLE 4 – REPORTING AND PAYMENT ARRANGEMENTS

4.1 The request for payment is considered to be received by the Agency when the following declarations have been submitted:

a) The declaration of the Wi-Fi installation company in the WiFi4EU Portal that the WiFi4EU network(s) installation has been concluded according to Annex I and it is functioning. The declaration shall include for each WiFi4EU network, the following mandatory information:

- the WiFi4EU network name (e.g.: City Hall).
- the domain name.

In addition, for each WiFi4EU network, the Wi-Fi installation company shall provide a full list of access points installed. For each access point, the following mandatory information shall be provided:

- ✓ Location type (e.g.: school, park, metro). There will be a drop-down list in the WiFi4EU portal.
- ✓ Name of location (e.g.: corridor)
- ✓ Geolocation of the Access Point
- ✓ Equipment type: Indoor or outdoor
- ✓ Device brand
- ✓ Device model
- ✓ Device serial number
- ✓ Media Access Control (MAC) address

b) The declaration from the beneficiary in the WiFi4EU Portal that the WiFi4EU network(s) conforms with Annex I and it is functioning.

4.2 Upon receipt of the declarations and the additional information referred to in Article 4.1, the Agency shall have a maximum of 60 days to verify that the WiFi4EU network(s) is functioning and to make the payment of the balance to the WiFi installation company.

The payment shall be made only if the following conditions are fulfilled:

i) at least 10 users have connected per WiFi4EU network;
ii) the WiFi4EU visual identity is appropriately displayed on the captive portal

Upon fulfilment of the above conditions, the beneficiary shall receive a confirmatory notification and the Agency shall proceed with the payment to the Wi-Fi installation company. The conditions for payment referred to above shall not affect the right of the Agency to check the compliance the Wi-Fi installations with the technical

specifications in Annex I through ex-post audits.

ARTICLE 5 – BANK ACCOUNT FOR PAYMENT

The payment of the voucher shall be made to the bank account indicated by the Wi-Fi installation company in the WiFi4EU Portal in International Bank Account Number (IBAN) format.

ARTICLE 6 - DATA CONTROLLER AND COMMUNICATION DETAILS OF THE PARTIES

6.1 Data controller

The joint data controllers are DG CONNECT and INEA.

6.2 Communication details

6.2.1 Form and means of communications

All electronic communication where foreseen must be made through the WiFi4EU portal https://www.wifi4eu.eu/, including by way of the helpdesk function therein.

Communication needed under articles II.14, II.15, II.16, II.25, II.26, II.27 and any other communication not supported by the WiFi4EU portal must be done in writing, bear the number of the Agreement and addressed to:

Innovation and Networks Executive Agency (INEA)
Department C - Connecting Europe Facility (CEF)
Unit C5 – CEF Telecommunications
W910
1049 Brussels
Belgium
INEA-CEF-WIFI4EU@ec.europa.eu

Formal notifications on paper addressed to the beneficiary must be sent to its legal address as specified in the preamble of this Grant Agreement.

6.2.2 Date of communications through the WiFi4EU portal

Communications done through the WiFi4EU portal are considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the WiFi4EU portal).

All communication shall take place in the language of this agreement or in English. The Agency will communicate in the same language as the beneficiary.

ARTICLE 7 - MONO-BENEFICIARY GRANT, ENTITIES AFFILIATED TO THE

BENEFICIARIES AND IMPLEMENTING BODIES DESIGNATED BY THE BENEFICIARIES

Any reference to the 'beneficiaries' shall be interpreted as references to the 'beneficiary'. No affiliated entities or implementing bodies can be designated.

ARTICLE 8 – ADDITIONAL PROVISIONS ON USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)

In addition to the provisions of Article II.8.3, the beneficiaries shall warrant the Agency the rights to:

- make use of the name of the beneficiary and images of the WiFi4EU network(s) for the promotion of the initiative;
- make use of anonymised data about connections to the WiFi4EU network(s) for statistical purposes.

ARTICLE 9 – MONITORING REQUIREMENTS, RECONFIGURATION OF THE NETWORKS

The beneficiary shall:

- keep the WiFi4EU network(s) fully functional for a period of three years starting from the date of the confirmatory notification by the Agency described in Article 4.2.
- reconfigure the WiFi4EU network(s) in order to connect them to the secured authentication and monitoring solution in full compliance with the requirements set out in Point I.5 of Annex I.

The beneficiary will also be responsible for the regular maintenance and necessary repairs of the WiFi4EU network(s). The network(s) may not be inoperable for more than 60 calendar days in the course of a year.

During the three years period from the payment of the balance, the Agency may carry out technical checks and/or audits to determine whether the beneficiary is complying with the provisions of this Agreement.

ARTICLE 10 – ADDITIONAL PROVISIONS ON ASSIGMENT OF CLAIMS

As an exception from the first subparagraph of Article II.13.1, the beneficiary is entitled to assign to the Wi-Fi installation company the right to claim against the Agency the amount specified in Article 3.

The payment made to the Wi-Fi Installation Company is considered as payment made to the beneficiary and releases the Agency from any other payment obligation.

ARTICLE 11 – EQUIVALENT METHODS FOR THE CONFIGURATION AND CONNECTION TO THE EC MONITORING SOLUTION.

In exceptional cases, following the signature of an Administrative Agreement between the Commission and the relevant administration of any Member State, Norway or Iceland, the methods for the configuration and connection to the EC monitoring solution described in Point I.5 of Annex I may be amended by equivalent configuration and connection methods contained in the Administrative Agreement.

The beneficiary shall notify to the Agency its adherence to the equivalent configuration and connection methods contained in the Administrative Agreement through the WiFi4EU portal. This Agreement shall be considered amended from the moment of receipt of the notification by the Agency.

ARTICLE 12 – EFFECTS OF TERMINATION

Where the Agreement is terminated following the provisions of Article II.16.1 or II.16.3.1, the Agency may reduce the amount of the grant and recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

After termination, the concerned beneficiary's obligations continue to apply, in particular those under Articles 4, II.5, II.7, II.8, II.13, II.27 and any additional provisions on the use of the results, as set out in Article 8.

Done in English

ELECTRONIC SIGNATURES

For the beneficiary

María Cristina Díaz Rodríguez

Digitally signed by María Cristina Díaz Rodríguez
Date: 20/08/2020
Signature ID:
SigId-7796-vkPQh7e0LDgkLzyWBFGxqJ5dBXIFPNRbCY
rNJf2NED9MSWDA7r6VewC5pOYl5VqVlzzzYn3tKFwERW6
YwCtNaN8-jpJZscgsw0K7MvhE20XbzzW-PED07IGjQ7RA
PWQwCi3tva5k2F1YLbzRjXr3ihUfr5fFzysWpkVTvozMh
YeLPUFt0oRPfX7ghe81D8c8cIUcHMW

For the Agency

BOSCHEN Andreas

Digitally signed by BOSCHEN Andreas
Date: 03/09/2020

Innovation and Networks Executive Agency

Department C - Connecting Europe Facility (CEF)

ANNEX I
DESCRIPTION OF THE ACTION

I.1. Scope and objectives

The WiFi4EU initiative is a support scheme for the provision of free Wi-Fi access in indoor or outdoor public spaces (e.g. public administrations premises, schools, libraries, health centres, museums, public parks and squares). This will bring communities more closely into the Digital Single Market, give users access to the Gigabit society, improve digital literacy and complement the public services provided in those spaces. WiFi4EU vouchers can be used to fund the installation of an entirely new public Wi-Fi network, to upgrade an existing public Wi-Fi network or to extend the coverage of an existing public Wi-Fi network. The installed network shall not duplicate existing free private or public offers of similar characteristics, including quality.

I.2. Technical requirements for the Wi-Fi equipment of the WiFi4EU network(s)

The beneficiary shall install a number of APs reflecting the value of the voucher in their market. In any event it shall install at a minimum the following number, depending on the combination of indoor and outdoor APs:

Minimum number of outdoor APs	Minimum number of indoor APs
10	0
9	2
8	3
7	5
6	6
5	8
4	9
3	11
2	12

1	14
0	15

The beneficiary shall ensure that **each AP**:

- Supports concurrent dual-band (2,4Ghz – 5Ghz) use;
- Has a support cycle superior to 5 years;
- Has a mean time between failure (MTBF) of at least 5 years;
- Has a dedicated and centralised single point of management at least for all APs of each WiFi4EU network;
- Supports IEEE 802.1x;
- Complies with IEEE 802.11ac Wave I;
- Supports IEEE 802.11r;
- Supports IEEE 802.11k;
- Supports IEEE 802.11v;
- Is able to handle at least 50 concurrent users without performance degradation;
- Has at least 2x2 multiple-input-multiple-output (MIMO);
- Complies with Hotspot 2.0 (Passpoint Wi-Fi Alliance certification program).

I.3. Quality of service requirements

In order to ensure that the WiFi4EU funded network is capable of providing a high quality user experience, the beneficiary shall subscribe to an offer equivalent to the highest speed available mass-market Internet connection in the area and in any event to one offering at least 30 Mbps download. The beneficiary shall also ensure that this backhaul speed is at least equivalent to that – if any – which is used by the beneficiary for its internal connectivity needs.

I.4. Obligations on charges, advertising and use of data

1. The beneficiary shall ensure that end-user access to the WiFi4EU network shall be free of charge, *i.e.* provided without corresponding remuneration whether by direct payment or by other types of consideration, notably free of commercial advertising, nor re-using personal data for commercial purposes.
2. The beneficiary shall ensure that end-user access by electronic communications network operators shall also be provided without discrimination, *i.e.* without prejudice to restrictions required under Union law, or under national law that complies with Union law, subject to the need to ensure a smooth functioning of the network and, in particular, the need to ensure a fair allocation of capacity between users at peak times.

3. Processing for statistical and analytical purposes may be regularly done in order to promote, monitor, or improve the functioning of the networks. For this purpose, any storage or processing of personal data shall be duly anonymised in accordance with the relevant Service Specific Privacy Statement(s).

I.5. Requirements for the configuration and connection of WiFi4EU network(s) to the EC monitoring solution

Subject to the fourth paragraph below, the beneficiary shall ensure that the access points funded with a WiFi4EU voucher only broadcast the WiFi4EU SSID and that the obligations as stipulated in Point I.4 fully apply.

The beneficiary shall ensure that the WiFi4EU network with WiFi4EU SSID is an open network in the sense that it does not require any kind of authentication information (such as the use of a password) to connect to it. Once the user connects to it, the beneficiary shall ensure that the WiFi4EU network with WiFi4EU SSID shows an https captive portal prior to authorising the user to connect to Internet.

Unless required by national legislation in compliance with Union law, the connection to the Internet through the WiFi4EU SSID shall not require any registration or authentication in the captive portal and shall be completed through a "one-click to connect" button in the captive portal.

The beneficiary may broadcast an additional SSID for appropriately secured connections referred to in Point I.5.2 from the start of Phase I and under its responsibility. The beneficiary may also broadcast an additional SSID provided it is limited to internal use of the beneficiary and does not unduly affect the quality of service offered to the public. In both these cases, the beneficiary shall appropriately differentiate such SSIDs from the WiFi4EU open SSID and ensure that the obligations as stipulated in Points I.3 and I.4 fully apply.

For access points not funded by the WiFi4EU voucher, the beneficiary may also broadcast the WiFi4EU SSID (as the only SSID or in parallel to their existing local SSID). The beneficiary shall ensure that at least for end-users connecting to the WiFi4EU SSID, the obligations as stipulated in Point I.3, I.4 and in the present I.5 fully apply.

The connection to the EC monitoring solution shall be implemented following a two – phase approach.

I.5.1. Phase I

The registration, authentication, authorisation and accounting of users is the responsibility of each beneficiary in compliance with EU and national law.

The beneficiary shall ensure compliance with the following requirements for the captive portal in the WiFi4EU SSID:

- The WiFi4EU network with WiFi4EU SSID shall use an HTTPS captive portal for the interface with the users.

The captive portal shall establish a period for automatic recognition of previously connected users, so that the captive portal is not shown again at reconnection. This period shall be automatically reset every day at 00:00 or at least be set up for a maximum of 12 hours.

- The domain name associated with the https captive portal shall be classic (non-IDN), consisting of characters a to z, digits 0 through 9, hyphen (-).
- Visual identity: the captive portal shall include the WiFi4EU visual identity.
- The captive portal shall embed a tracking snippet for the Agency to be able to remotely monitor the WiFi4EU network.

  The snippet installation guideline is available at the following link: https://ec.europa.eu/inea/en/connecting-europe-facility/cef-telecom/wifi4eu. The snippet will not collect any personal data. It will serve to count the number of users connecting to the WiFi4EU network, load the visual identity of WiFi4EU and check that it is displayed properly.
- The captive portal shall include a disclaimer clearly informing the users of the fact that WiFi4EU is a public open network. The disclaimer should also include the precautionary recommendations that are usually provided when accessing the Internet via such networks.

The beneficiary is entitled to set up distinct WiFi4EU networks funded by the same voucher, each of them with a different domain name and a different captive portal. The obligation pursuant to Article 9 to maintain the WiFi4EU network active for a period of 3 years after the verification by the Agency applies to all such WiFi4EU networks funded by the same voucher.

Phase I is applicable until the beneficiary receives a notification that Phase II has been activated. Once notified, the beneficiary will have the obligation pursuant to Article 9, to adjust the configuration of the network in accordance with the requirements set out under Point I.5 as further detailed in the notification, within the timeframe that will be indicated therein.

I.5.2. Phase II

At a later stage, a secured authentication and monitoring solution will be set up at EU level and will have the possibility of evolving into a federated architecture.

Pursuant to Article 9, once the secured authentication and monitoring solution is operational, the beneficiary shall reconfigure its WiFi4EU network(s) in order to connect them to this solution. This reconfiguration will include maintaining the open WiFi4EU SSID using the captive portal, adding an additional WiFi4EU SSID for appropriately secured connections (either by changing its existing local based secured system for the common one or simply by adding the common one as a third SSID) and ensuring that the solution can monitor the WiFi4EU networks at the access point level.

The registration and authentication of users for the open WiFi4EU SSID and for the local based SSID for secured connections where it exists, as well as the authorisation and

accounting of users for all SSIDs remains the responsibility of each beneficiary in compliance with EU and national law.

Acronyms

APs	Wi-Fi Access Points
IEEE	Institute of Electrical and Electronics Engineers
LTE	Long Term Evolution
MAC	Media Access Control
MIMO	Multiple-Input-Multiple-Output
RADIUS	Remote Authentication Dial-In User Service
SSIDs	Service Set Identifiers

ANNEX II
GENERAL CONDITIONS

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PART A – LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – GENERAL OBLIGATIONS OF THE BENEFICIARY

The beneficiary shall:

(a) be responsible for carrying out the action in accordance with the terms and conditions of the Agreement;

(b) be responsible for complying with any legal obligations incumbent on it under applicable EU, international and national law;

(c) inform the Agency immediately of any events or circumstances likely to affect or delay the implementation of the action of which the beneficiary is aware;

(d) inform the Agency immediately of any change in its legal, financial, technical, organisational or ownership situation or of its affiliated entities and of any change in its name, address or legal representative or of its affiliated entities.

ARTICLE II.2 – COMMUNICATIONS BETWEEN THE PARTIES

II.2.1 Form and means of communications

Any communication relating to the Agreement or to its implementation shall be made in writing (in paper or electronic form), shall bear the number of the Agreement and shall be made using the communication details identified in Article 6.

Electronic communications shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

Formal notifications shall be made by registered mail with return receipt or equivalent, or by electronic mail, which provides the sender with compelling evidence that the message was delivered to the specified recipient.

II.2.2 Date of communications

Any communication is deemed to have been made when it is received by the receiving party, unless the agreement refers to the date when the communication was sent.

Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in Article 6. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any of the other addresses listed in Article 6. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Agency using the postal services is considered to have been received by the Agency on the date on which it is registered by the department identified in Article 6.2.

Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

ARTICLE II.3 – LIABILITY FOR DAMAGES

II.3.1 The Agency shall not be held liable for any damage caused or sustained by any of the beneficiaries, including any damage caused to third parties as a consequence of or during the implementation of the action.

II.3.2 Except in cases of force majeure, the beneficiaries shall compensate the Agency for any damage sustained by it as a result of the implementation of the action or because the action was not implemented in full compliance with the Agreement.

ARTICLE II.4 - CONFLICT OF INTERESTS

II.4.1 The beneficiaries shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional life or any other shared interest with the Agency, or any third party related to the subject matter of the Agreement ("conflict of interests").

II.4.2 Any situation constituting or likely to lead to a conflict of interests during the implementation of the Agreement shall be notified to the Agency, in writing, without delay. The beneficiaries shall immediately take all the necessary steps to rectify this situation. The Agency reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

ARTICLE II.5 – CONFIDENTIALITY

II.5.1 The Agency and the beneficiaries shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Agreement and which are explicitly indicated in writing as confidential. It does not include information that is publicly available.

II.5.2 The Agency and the beneficiaries shall not use confidential information and documents for any reason other than fulfilling their obligations under the Agreement, unless otherwise agreed with the other party in writing.

II.5.3 The Agency and the beneficiaries shall be bound by the obligations referred to in Articles II.5.1 and II.5.2 during the implementation of the Agreement and for a period of five years starting from the payment of the balance, unless:

(a) the party concerned agrees to release the other party from the confidentiality obligations earlier;

(b) the confidential information or documents become public through other means than a breach of the confidentiality obligations;

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

ARTICLE II.6 – PROCESSING OF PERSONAL DATA

II.6.1 Processing of personal data by the Agency

Any personal data included in the Agreement shall be processed by the Agency pursuant to 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.

Such data shall be processed by the data controller identified in Article 6.1 solely for the purposes of the implementation, management and monitoring of the Agreement or to protect the financial interests of the EU, including checks, audits and investigations in accordance with Article II.27.

The beneficiaries shall have the right of access to their personal data and the right to rectify any such data. Should the beneficiaries have any queries concerning the processing of their personal data, they shall address them to the data controller, identified in Article 6.1.

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

II.6.2 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 access to data that the beneficiaries grant to their personnel shall be limited to the extent strictly necessary for the implementation, management and monitoring of the Agreement.

The beneficiaries undertake to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:

(i) unauthorised reading, copying, alteration or removal of storage media;

(ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(iii) unauthorised use of data-processing systems by means of data transmission facilities;

(b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

(c) record which personal data have been communicated, when and to whom;

(d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Agency;

(e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

(f) design their organisational structure in such a way that it meets data protection requirements.

ARTICLE II.7 – VISIBILITY OF UNION FUNDING

II.7.1 Information on Union funding and use of European Union emblem

Unless the Agency requests or agrees otherwise, any communication or publication related to the action, made by the beneficiaries jointly or individually, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall indicate that the action has received funding from the Union and shall display the European Union emblem.

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

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

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the beneficiaries are exempted from the obligation to obtain prior permission from the Agency to use the European Union emblem.

II.7.2 Disclaimers excluding Agency responsibility

Any communication or publication related to the action, made by the beneficiaries jointly or individually in any form and using any means, shall indicate that it reflects only the author's view and that the Agency is not responsible for any use that may be made of the information

it contains.

ARTICLE II.8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)

II.8.1 Ownership of the results by the beneficiaries

Unless stipulated otherwise in the Agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the beneficiaries.

II.8.2 Pre-existing rights

Pre-existing material is any materials, document, technology or know-how which exists prior to the beneficiary using it for the production of a result in the implementation of the action. Pre-existing right is any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or a right of use belonging to the beneficiary or any other third parties.

If the Agency sends the beneficiaries a written request specifying which of the results it intends to use, the beneficiaries must:

(a) establish a list specifying all pre-existing rights included in those results; and

(b) provide this list to the Agency at the latest with the request for payment of the balance.

The beneficiaries shall ensure that they or their affiliated entities have all the rights to use any pre-existing rights during the implementation of the Agreement.

II.8.3 Rights of use of the results and of pre-existing rights by the Agency

The beneficiaries grant the Agency the following rights to use the results of the action:

(a) for its own purposes, and in particular, to make available to persons working for the Agency, Union institutions, other Union agencies and bodies and to Member States' institutions, as well as to copy and reproduce in whole or in part and in an unlimited number of copies;

(b) reproduction: the right to authorise direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;

(c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including making the results

available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes communication and broadcasting by cable or by satellite;

(d) distribution: the right to authorise any form of distribution of results or copies of the results to the public;

(e) adaptation: the right to modify the results;

(f) translation;

(g) the right to store and archive the results in line with the document management rules applicable to the Agency, including digitalisation or converting the format for preservation or new use purposes;

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

Additional rights of use for the Agency may be provided for in the Special Conditions.

The beneficiaries shall warrant that the Agency has the right to use any pre-existing rights, which have been included in the results of the action. Unless specified otherwise in the Special Conditions, those pre-existing rights shall be used for the same purposes and under the same conditions applicable to the rights of use of the results of the action.

Information about the copyright owner shall be inserted when the result is divulged by the Agency. The copyright information shall read: "© – [*year*] – [*name of the copyright owner*]. All rights reserved. Licenced to the Innovation and Networks Executive Agency under conditions".

If the beneficiaries grant rights of use to the Agency, this does not affect their confidentiality obligations under Article II.5 or the beneficiaries' obligations under Article II.1.

ARTICLE II.9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION

II.9.1 Where the implementation of the action requires the procurement of goods, works or services, the beneficiaries shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, they shall avoid any conflict of interests.

The beneficiaries shall ensure that the Agency, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors may exercise their rights

under Article II.27 also towards the contractor.

II.9.2 Beneficiaries acting in their capacity of 'contracting authorities' within the meaning of Directive 2004/18/EC[1] or Directive 2014/24/EU[2] or any previous applicable Union legislation or 'contracting entities' within the meaning of Directive 2004/17/EC[3] or Directive 2014/25/EU[4] or any previous applicable Union legislation must comply with the applicable national public procurement rules.

II.9.3 The beneficiaries shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Agreement. The beneficiaries shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis the Agency under the Agreement.

II.9.4 The beneficiaries shall ensure that the conditions applicable to them under Articles II.3, II.4, II.5 and II.8 are also applicable to the contractor.

II.9.5 Where, in accordance with Article 3, the grant takes the form of the reimbursement of eligible costs:

- If a beneficiary breaches any of its obligations under Article II.9.1, the costs related to the contract concerned shall be ineligible;

- If a beneficiary breaches any of its obligations under Article II.9.2, II.9.3 or II.9.4, the grant may be reduced in proportion to the seriousness of the breach of obligations.

Where, in accordance with Article 3 the grant takes the form of a unit, lump sum or flat-rate contribution, if a beneficiary breaches any of its obligations under Article II.9.1, II.9.2, II.9.3 or II.9.4, the grant may be reduced in proportion to the seriousness of the breach of obligations.

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1 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 works contracts, public supply contracts and public service contracts

2 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

3 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

4 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

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

Not applicable

ARTICLE II.11 - FINANCIAL SUPPORT TO THIRD PARTIES

Not applicable

ARTICLE II.12 – AMENDMENTS TO THE AGREEMENT

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

II.12.2 An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants.

II.12.3 Any request for amendment shall be duly justified, be accompanied by appropriate supporting documents and shall be sent to the other party in due time before it is due to take effect, and in any case three months before the end of the period set out in Article 2.2, except in cases duly substantiated by the party requesting the amendment and accepted by the other party.

II.12.4 A request for amendment shall be jointly submitted by all the beneficiaries or shall be submitted by a beneficiary acting on behalf of all beneficiaries.

II.12.5 Amendments shall enter into force on the date on which the last party signs or on the date of approval of the request for amendment.

Amendments shall take effect on a date agreed by the parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

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

II.13.1 Claims for payments of the beneficiaries against the Agency may not be assigned to third parties, except in duly justified cases where the situation warrants it.

The assignment shall only be enforceable against the Agency if it has accepted the assignment on the basis of a written and reasoned request to that effect made by the beneficiary requesting the assignment.

In the absence of such an acceptance, or in the event of failure to observe the terms thereof, the assignment shall have no effect on the Agency.

II.13.2 In no circumstances shall such an assignment release the beneficiaries from their obligations towards the Agency.

ARTICLE II.14 – FORCE MAJEURE

II.14.1 "*Force majeure*" shall mean any unforeseeable, exceptional situation or event beyond the parties' control, which prevents either of them from fulfilling any of their obligations under the Agreement, which was not attributable to error or negligence on their part or on the part of subcontractors, affiliated entities, implementing bodies or third parties in receipt of financial support and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, as well as labour disputes, strikes or financial difficulties cannot be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure.*

II.14.2 A party faced with *force majeure* shall formally notify the other party without delay, stating the nature of the situation or of the event, its likely duration and foreseeable effects.

II.14.3 The parties shall take the necessary measures to limit any damage due to *force majeure.* They shall do their best to resume the implementation of the action as soon as possible.

II.14.4 The party faced with *force majeure* shall not be held to be in breach of its obligations under the Agreement if it has been prevented from fulfilling them by *force majeure*.

ARTICLE II.15 – SUSPENSION OF THE IMPLEMENTATION OF THE ACTION

II.15.1 Suspension of the implementation by the beneficiaries

The beneficiaries, acting jointly, or a beneficiary, acting on behalf of all beneficiaries, may suspend the implementation of the action or any part thereof, if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*. The beneficiaries, acting jointly, or a beneficiary, acting on behalf of all beneficiaries, shall inform the Agency without delay, giving the reasons for suspension, including details about the date or period when the exceptional circumstances occurred and the expected date of resumption.

Unless the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.16.1, II.16.2 or points (c) or (d) of Article II.16.3.1, the beneficiaries acting jointly, or a beneficiary, acting on behalf of all beneficiaries, shall, once the circumstances allow resuming the implementation of the action, inform the Agency immediately and present a request for amendment of the Agreement as provided for in Article II.15.3.

II.15.2 Suspension of the implementation by the Agency

II.15.2.1 The Agency may suspend the implementation of the action or any part thereof:

(a) if the Agency has evidence that a beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Agreement or if a beneficiary fails to comply with its obligations under the Agreement;

(b) if the Agency has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or serious breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant;

(c) if the Agency suspects substantial errors, irregularities, fraud or breach of obligations committed by a beneficiary in the award procedure or in the implementation of the Agreement and needs to verify whether they have actually occurred; *or*

(d) following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action

II.15.2.2 Before suspending the implementation the Agency shall formally notify all the beneficiaries of its intention to suspend, specifying the reasons thereof, and, in the cases referred to in points (a), (b) and (d) of Article II.15.2.1, the necessary conditions for resuming the implementation. The beneficiaries shall be invited to submit observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the beneficiaries, the Agency decides to stop the suspension procedure, it shall formally notify all the beneficiaries thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiaries, the Agency decides to pursue the suspension procedure, it may suspend the implementation by formally notifying all the beneficiaries thereof, specifying the reasons for the suspension and, in the cases referred to in points (a), (b) and (d) of Article II.15.2.1, the definitive conditions for resuming the implementation or, in the case referred to in point (c) of Article II.15.2.1, the indicative date of completion of the necessary verification.

The suspension shall take effect five calendar days after the receipt of the notification by the beneficiaries or on a later date, where the notification so provides.

In order to resume the implementation, the beneficiaries shall endeavour to meet the notified conditions as soon as possible and shall inform the Agency of any progress made in this respect.

Unless the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.16.1, II.16.2 or points (c), (i), (j), (k), or (o) of Article II.16.3.1, the Agency shall, as soon as it considers that the conditions for resuming the implementation have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify all the beneficiaries thereof and invite them to present a request for amendment of the Agreement as provided for in Article II.15.3.

II.15.3 Effects of the suspension

If the implementation of the action can be resumed and the Agreement is not terminated, an amendment to the Agreement shall be made in accordance with Article II.12 in order to establish the date on which the action shall be resumed, to extend the duration of the action and to make any other modifications that may be necessary to adapt the action to the new implementing conditions.

The suspension is deemed lifted with effect as from the date of resumption of the action agreed by the parties in accordance with the first subparagraph and set out in the amendment. Such a date may be before the date on which the amendment enters into force.

Any costs incurred by the beneficiaries, during the period of suspension, for the implementation of the suspended action or the suspended part thereof, shall not be reimbursed or covered by the grant.

The right of the Agency to suspend the implementation is without prejudice to its right to terminate the Agreement or the participation of a beneficiary in accordance with Article II.16.3 and its right to reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

Neither party shall be entitled to claim damages due to a suspension by the other party.

ARTICLE II.16 – TERMINATION OF THE AGREEMENT

II.16.1 Termination of the Agreement by the beneficiaries

In duly justified cases, the beneficiaries, acting jointly, or a beneficiary, acting on behalf of all beneficiaries, may terminate the Agreement by formally notifying the Agency thereof, stating clearly the reasons and specifying the date on which the termination shall take effect. The notification shall be sent before the termination is due to take effect.

If no reasons are given or if the Agency considers that the reasons exposed cannot justify the termination, it shall formally notify all the beneficiaries, specifying the grounds thereof, and the Agreement shall be deemed to have been terminated improperly, with the consequences

set out in the fourth subparagraph of Article II.16.4.1. The termination takes effect on the day specified in the formal notification.

II.16.2 Termination of the participation of one or more beneficiaries by the beneficiaries

Not applicable

II.16.3 Termination of the Agreement or the participation of one or more beneficiaries by the Agency

II.16.3.1 The Agency may decide to terminate the Agreement or the participation of any one or several beneficiaries participating in the action, in the following circumstances:

(a) if a change to the beneficiary's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Agreement substantially or calls into question the decision to award the grant;

(b) not applicable;

(c) if the beneficiaries do not implement the action as specified in Annex I or if a beneficiary fails to comply with another substantial obligation incumbent on it under the terms of the Agreement;

(d) in the event of *force majeure*, notified in accordance with Article II.14, or in the event of suspension by the coordinator as a result of exceptional circumstances, notified in accordance with Article II.15, where resuming the implementation is impossible or where the necessary modifications to the Agreement would call into question the decision awarding the grant or would result in unequal treatment of applicants;

(e) if a beneficiary or any person that assumes unlimited liability for the debts of that beneficiary comes under any of the situations provided for in points (a) or (b) of Article 106 (1) of the Financial Regulation[5];

[5] 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.

(f) if a beneficiary or any related person, as defined in the second subparagraph, comes under any of the situations provided for in points (c), (d), (e) or (f) of Article 106 (1) or comes under Article 106 (2) of the Financial Regulation;

(g) not applicable;

(h) not applicable;

(i) if the Agency has evidence that a beneficiary or any related person, as defined in the second subparagraph, have committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Agreement, including in the event of submission of false information or failure to submit required information;

(j) if the Agency has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or serious breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant;

(k) following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action;

(l) not applicable

(m) not applicable;

(n) not applicable*;*

(o) not applicable.

For the purposes of points (f) and (i), "any related person" shall mean any person who has the power to represent the beneficiary or to take decisions on its behalf.

For the purposes of points (i) and (j), "fraud" shall mean any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents, to non-disclosure of information in violation of a specific obligation.

For the purposes of point (i), "substantial error" shall mean any infringement of a provision of an agreement resulting from an act or omission, which causes or might cause a loss to the Union’s budget.

For the purposes of points (i) and (j), "irregularity" shall mean any infringement

of a provision of Union law resulting from an act or omission by a beneficiary, which has or would have the effect of prejudicing the Union's budget.

II.16.3.2 Before terminating the Agreement or the participation of any one or several beneficiaries, the Agency shall formally notify all the beneficiaries of its intention to terminate, specifying the reasons thereof and inviting the beneficiaries, acting jointly, or one beneficiary, acting on behalf of all beneficiaries, within 45 calendar days from receipt of the notification, to submit observations and, in the case of point (c) of Article II.16.3.1, to inform the Agency about the measures taken to ensure that the beneficiaries continue to fulfil their obligations under the Agreement.

If, after examination of the observations submitted by the beneficiaries, the Agency decides to stop the termination procedure, it shall formally notify all the beneficiaries thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiaries, the Agency decides to pursue the termination procedure, it may terminate the Agreement or the participation of any one or several beneficiaries by formally notifying all the beneficiaries thereof, specifying the reasons for the termination.

In the cases referred to in points (a), (b), (c), (e) and (k) of Article II.16.3.1, the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (i), (j), (l) and (o) of Article II.16.3.1, the termination shall take effect on the day following the date on which the formal notification was received by the beneficiaries.]

II.16.4 Effects of termination

II.16.4.1 Not applicable

II.16.4.2 Not applicable

II.16.4.3 Neither party shall be entitled to claim compensation on account of a termination by the other party.

ARTICLE II.17 – NOT APPLICABLE

ARTICLE II.18 – APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISION

II.18.1 The Agreement is governed by the applicable Union law complemented, where necessary, by the law of Belgium.

II.18.2 Pursuant to Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, shall have sole jurisdiction to hear any dispute between the

Union and any beneficiary concerning the interpretation, application or validity of this Agreement, if such dispute cannot be settled amicably.

II.18.3 By virtue of Article 299 TFEU, for the purposes of recoveries within the meaning of Article II.26, the Commission may adopt an enforceable decision to impose pecuniary obligations on persons other than States. An action may be brought against such decision before the General Court of the European Union pursuant to Article 263 TFEU.

PART B – FINANCIAL PROVISIONS

ARTICLE II.19 – ELIGIBLE COSTS

Not applicable

ARTICLE II.20 – IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED

II.20.1 Reimbursement of actual costs

Not applicable

II.20.2 Reimbursement of pre-determined unit costs or pre-determined unit contribution

Not applicable

II.20.3 Reimbursement of pre-determined lump sum costs or pre-determined lump sum contribution

Where, in accordance with Article 3, the grant takes the form of the reimbursement of lump sum costs or of a lump sum contribution, the beneficiary must declare as eligible costs or as requested contribution the global amount specified in Article 3 subject to the proper implementation of the corresponding tasks or part of the action as described in Annex I.

If requested to do so in the context of the checks or audits described in Article II.27, the beneficiary must be able to provide adequate supporting documents to prove the proper implementation. However, the beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, to prove the amount declared as lump sum.

II.20.4 Reimbursement of pre-determined flat-rate costs or pre-determined flat-rate contribution

Not applicable

II.20.5 Reimbursement of costs declared on the basis of the beneficiary's usual cost accounting practices

Not applicable

ARTICLE II.21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARIES AND OF IMPLEMENTING BODIES DESIGNATED BY THE BENEFICIARIES

Not applicable

ARTICLE II.22 – BUDGET TRANSFERS

Not applicable

ARTICLE II.23 – TECHNICAL AND FINANCIAL REPORTING – REQUESTS FOR PAYMENT AND SUPPORTING DOCUMENTS

Not applicable

ARTICLE II.24 – PAYMENTS AND PAYMENT ARRANGEMENTS

II.24.1 Pre-financing

Not applicable

II.24.2 Interim payments

Not applicable

II.24.3 Payment of the balance

The payment of the balance, which may not be repeated, is intended to reimburse or cover after the end of the period set out in Article 2.2 the remaining part of the eligible costs incurred by the beneficiaries for its implementation. Where the total amount of earlier payments is greater than the final amount of the grant determined in accordance with Article II.25, the payment of the balance may take the form of a recovery as provided for by Article II.26.

Without prejudice to Articles II.24.4 and II.24.5, on receipt of the documents referred to in Article II.23.2, the Agency shall pay the amount due as the balance within the time limit specified in Article 4.2.

This amount shall be determined following approval of the request for payment of the balance and of the accompanying documents and in accordance with the fourth subparagraph. Approval of the request for payment of the balance and of the accompanying documents shall not imply recognition of the compliance, authenticity, completeness or correctness of the declarations and information they contain.

The amount due as the balance shall be determined by deducting, from the final amount of the grant determined for each beneficiary in accordance with Article II.25, the total amount of pre-financing and interim payments already made to the beneficiary.*]*

II.24.4 Suspension of the time limit for payment

The Agency may suspend the time limit for payment specified in Article 4.2 at any time by formally notifying the beneficiary concerned that its request for payment cannot be met, either because it does not comply with the provisions of the Agreement, or because the appropriate supporting documents have not been produced, or because there is doubt about the eligibility of the costs declared in the financial statement.

The beneficiary concerned shall be notified as soon as possible of any such suspension, together with the reasons thereof.

Suspension shall take effect on the date when notification is sent by the Agency. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension exceeds two months, the beneficiary concerned may request a decision by the Agency on whether the suspension is to be continued.

Where the time limit for payment has been suspended following the rejection of one of the technical reports or financial statements provided for by Article II.23 and the new report or statement submitted is also rejected, the Agency reserves the right to terminate the Agreement or the participation of the beneficiary concerned in accordance with Article II.16.3.1(c), with the effects described in Article II.16.4.

II.24.5 Suspension of payments

II.24.5.1 The Agency may, at any time during the implementation of the Agreement, suspend the pre-financing payments, interim payments or payment of the balance for all beneficiaries, or suspend the pre-financing payments or interim payments for any one or several beneficiaries:

(a) if the Agency has evidence that a beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant, or if a beneficiary fails to comply with its obligations under the Agreement;

(b) if the Agency has evidence that a beneficiary has committed systemic or recurrent errors, irregularities, fraud or serious breach of obligations under other grants funded by the Union or by the European Atomic Energy Community which were awarded to that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant;

(c) if the Agency suspects substantial errors, irregularities, fraud or breach of obligations committed by a beneficiary in the award procedure or in the implementation of the Agreement and needs to verify whether they have actually occurred; or

(d) following an evaluation of the progress of the project, in particular in the event of major delays in the implementation of the action.

II.24.5.2 Before suspending payments, the Agency shall formally notify all the beneficiaries of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a), (b) and (d) of Article II.24.5.1, the necessary conditions for resuming payments. The beneficiaries shall be invited to make any observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the beneficiaries, the Agency decides to stop the procedure of payment suspension, the Agency shall formally notify all the beneficiaries thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiaries, the Agency decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying all the beneficiaries thereof, specifying the reasons for the suspension and, in the cases referred to in points (a), (b) and (d) of Article II.24.5.1, the definitive conditions for resuming payments or, in the case referred to in point (c) of Article II.24.5.1, the indicative date of completion of the necessary verification.

The suspension of payments shall take effect on the date when the notification is sent by the Agency.

In order to resume payments, the beneficiaries shall endeavour to meet the notified conditions as soon as possible and shall inform the Agency of any progress made in this respect.

The Agency shall, as soon as it considers that the conditions for resuming payments have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify all the beneficiaries thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation of the action in accordance with Article II.15.1 or to terminate the Agreement or the participation of a beneficiary in accordance with Article II.16.1 and Article II.16.2, the beneficiary or beneficiaries concerned by the suspension of payments are not entitled to submit any requests for payments.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments in accordance with the schedule laid down in Article 4.1.

II.24.6 Notification of amounts due

Not applicable

II.24.7 Interest on late payment

On expiry of the time limits for payment specified in Articles 4.2 and II.24.1, and without prejudice to Articles II.24.4 and II.24.5, the beneficiaries are entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros ("the reference rate"), plus three and a half points. The reference rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

The first subparagraph shall not apply to beneficiaries that are Member States of the Union, including regional and local government authorities and other public bodies acting in the name and on behalf of the Member State for the purpose of this Agreement.

The suspension of the time limit for payment in accordance with Article II.24.4 or of payment by the Agency in accordance with Article II.24.5 may not be considered as late payment.

Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article II.24.9. The interest payable shall not be considered for the purposes of determining the final amount of grant within the meaning of Article II.25.3.

By way of derogation from the first subparagraph, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the beneficiary only upon request submitted within two months of receiving late payment.

II.24.8 Currency for payments

Payments by the Agency shall be made in euro.

II.24.9 Date of payment

Payments by the Agency shall be deemed to be effected on the date when they are debited to the Agency's account.

II.24.10 Costs of payment transfers

Costs of the payment transfers shall be borne in the following way:

(a) costs of transfer charged by the bank of the Agency shall be borne by the Agency;

(b) costs of transfer charged by the bank of a beneficiary shall be borne by the beneficiary;

(c) all costs of repeated transfers caused by one of the parties shall be borne by the party

which caused the repetition of the transfer.

II.24.11 Payments to the beneficiaries

Not applicable.

ARTICLE II.25 – DETERMINING THE FINAL AMOUNT OF THE GRANT.

II.25.1 Calculation of the final amount

Without prejudice to Articles II.25.2, II.25.3 and II.25.4, the final amount of the grant shall be determined for each beneficiary as follows:

(a) where, in accordance with Article 3, the grant to the beneficiary, its affiliated entities or its implementing bodies takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate(s) specified in that Article to the eligible costs approved by the Agency for the corresponding categories of costs and activities;

(b) where, in accordance with Article 3, the grant to the beneficiary, its affiliated entities or its implementing bodies takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified in that Article by the actual number of units approved by the Agency;

(c) where, in accordance with Article 3, the grant to the beneficiary, its affiliated entities or its implementing bodies takes the form of a lump sum contribution, the lump sum specified in that Article, subject to approval by the Agency of the proper implementation of the corresponding tasks or part of the action in accordance with Annex I;

(d) where, in accordance with Article 3, the grant to the beneficiary, its affiliated entities or its implementing bodies takes the form of a flat-rate contribution, the amount obtained by applying the flat rate referred to in that Article to the eligible costs or to the contribution accepted by the Agency.

Where Article 3 provides for a combination of different forms of grant for the beneficiary, its affiliated entities or its implementing bodies, these amounts shall be added.

II.25.2 Maximum amount

The total amount paid by the Agency to a beneficiary may in no circumstances exceed the maximum amount of the grant for that beneficiary specified in Article 3.

Where the amount determined in accordance with Article II.25.1 for a beneficiary exceeds this maximum amount, the final amount of the grant for that beneficiary shall be limited to the maximum amount specified in Article 3.

II.25.3 No-profit rule and taking into account of receipts

Not applicable

II.25.4 Reduction for poor, partial or late implementation, or breach of contractual obligations

The Agency may reduce the maximum grant amount per beneficiary set out in Article 3 if the action is not implemented properly in accordance with Annex I (i.e. if it has not been implemented or has been implemented poorly, partially or late), or if a beneficiary fails to comply with any other obligations under this Agreement.

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

Before the Agency reduces the grant, it must send a formal notification to the beneficiary concerned:

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

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

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

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

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

(a) the amount determined in accordance with Article II.25.1, II.25.2 and II.25.3; or

(b) the reduced grant amount determined in accordance with Article II.25.4.

ARTICLE II.26 – RECOVERY

II.26.1 Recovery at the time of payment of the balance

Where the payment of the balance for a beneficiary takes the form of a recovery, the Agency shall formally notify the beneficiary concerned of its intention to recover the amount unduly paid:

(a) specifying the amount due and the reasons for recovery;

(b) inviting the beneficiary concerned to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary concerned, the Agency decides to pursue the recovery procedure, the Agency may confirm recovery by formally notifying to the beneficiary concerned a debit note ("debit note"), specifying the terms and the date for payment.

If the beneficiary concerned does not repay the Agency by the date specified in the debit note, the Agency or the Commission shall recover the amount due from the beneficiary in accordance with Article II.26.3.

II.26.2 Recovery after payment of the balance

Where an amount is to be recovered in accordance with Articles II.27.6, II.27.7 and II.27.8, the beneficiary concerned by the audit or OLAF findings shall repay the Agency the amount in question.

Before recovery, the Agency shall formally notify the beneficiary concerned of its intention to recover the amount unduly paid:

(a) specifying the amount due (including any amount unduly paid by the Agency as a contribution towards the costs incurred by its affiliated entities or its implementing bodies) and the reasons for recovery;

(b) inviting the beneficiary concerned to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary concerned, the Agency decides to pursue the recovery procedure, the Agency may confirm recovery by formally notifying to the beneficiary concerned a debit note ("debit note"), specifying the terms and the date for payment.

If the beneficiary concerned does not repay the Agency by the date specified in the debit note, the Agency or the Commission shall recover the amount due from the beneficiary in

accordance with Article II.26.3.

II.26.3 Recovery procedure failing repayment by the date specified in the debit note

If payment has not been made by the date specified in the debit note, the Agency or the Commission shall recover the amount due:

(a) by offsetting it against any amounts owed to the beneficiary concerned by the Commission or an executive agency (from the Union or the European Atomic Energy Community (Euratom) budget) ("offsetting"); in exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Agency may recover by offsetting before the due date; the beneficiary's prior consent shall not be required; an action may be brought against such offsetting before the General Court of the European Union pursuant to Article 263 TFEU;

(b) by drawing on the financial guarantee where provided for in accordance with Article 4.1 ("drawing on the financial guarantee");

(c) where provided for in the Special Conditions, by holding the beneficiaries jointly and severally liable;

(d) by taking legal action in accordance with Article II.18.2 or with the Special Conditions or by adopting an enforceable decision in accordance with Article II.18.3.

II.26.4 Interest on late payment

If payment has not been made by the date set out in the debit note, the amount due shall bear interest at the rate established in Article II.24.7. Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date when the Agency or the Commission actually receives payment in full of the outstanding amount.

Any partial payment shall first be appropriated against charges and interest on late payment and then against the principal.

II.26.5 Bank charges

Bank charges incurred in connection with the recovery of the sums owed to the Agency shall be borne by the beneficiary concerned except where 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 applies.

ARTICLE II.27 – CHECKS, AUDITS AND EVALUATION

II.27.1 Technical and financial checks, audits, interim and final evaluations

The Commission or the Agency may carry out technical and financial checks and audits to determine that the beneficiaries are implementing the action properly and are complying with the obligations under the Agreement. It may also check the statutory records of the beneficiaries for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

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

In addition, the Commission or the Agency may carry out interim or final evaluation of the impact of the action measured against the objective of the Union programme concerned, in order to assess whether the objectives, including those relating to environmental protection, have been attained.

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

Such checks, audits or evaluations may be initiated during the implementation of the Agreement and for a period of five years starting from the date of payment of the balance. This period shall be limited to three years if the maximum amount specified in Article 3 is not more than EUR 60 000.

The check, audit or evaluation procedure shall be deemed to be initiated on the date of receipt of the letter of the Commission or the Agency announcing it.

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

II.27.2 Duty to keep documents

The beneficiaries shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by their respective national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance.

This period shall be limited to three years if the maximum amount specified in Article 3 is not more than EUR 60 000.

The periods set out in the first and second subparagraphs shall be longer if there are on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case referred to in Article II.27.7. In such cases, the beneficiaries shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

II.27.3 Obligation to provide information

The beneficiaries shall provide any information, including information in electronic format, requested by the Commission or the Agency or by any other outside body authorised by it in

the framework of a check, audit or evaluation.

In case a beneficiary does not comply with the obligations set out in the first subparagraph, the Commission or the Agency may consider:

(a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;

(b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.4 On-the-spot visits

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

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

In case a beneficiary refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, the Commission or the Agency may consider:

(a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;

(b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.5 Contradictory audit procedure

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

II.27.6 Effects of audit findings

On the basis of the final audit findings, the Commission or the Agency may take the measures which it considers necessary, including recovery at the time of payment of the balance or after payment of the balance of all or part of the payments made by it, in accordance with Article II.26.

In the case of final audit findings made after the payment of the balance, the amount to be

recovered shall correspond to the difference between the revised final amount of the grant for the beneficiary concerned, determined in accordance with Article II.25, and the total amount paid to the beneficiary concerned under the Agreement for the implementation of its activities.

II.27.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations

II.27.7.1 The Commission or the Agency may extend audit findings from other grants to this grant if:

(a) the beneficiary is found, on the basis of an audit of other EU or Euratom grants awarded to it under similar conditions, to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on this grant; and

(b) the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations is formally received by the beneficiary, together with the list of grants affected by the findings, within the period referred to in Article II.27.1.

The extension of findings may lead to:

(a) the rejection of costs as ineligible;

(b) reduction of the grant as provided for in Article II.25.4;

(c) recovery of undue amounts as provided for in Article II.26;

(d) suspension of payments as provided for in Article II.24.5;

(e) suspension of the action implementation as provided for in Article II.15.2;

(f) termination as provided for in Article II.16.3.

II.27.7.2 The Commission or the Agency must send a formal notification to the beneficiary concerned informing it of the systemic or recurrent errors and of its intention to extend the audit findings, together with the list of grants affected.

(a) If the findings concern eligibility of costs, the procedure is as follows:

The formal notification must include:

(i) an invitation to submit observations on the list of grants affected by the findings;

(ii) a request to submit revised financial statements for all grants

affected;

(iii) where possible, the correction rate for extrapolation established by the Commission or the Agency to calculate the amounts to be rejected on the basis of the systemic or recurrent errors, irregularities, fraud or breach of obligations, if the beneficiary concerned:
- considers that the submission of revised financial statements is not possible or practicable; or
- will not submit revised financial statements.

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

If the beneficiary concerned submits revised financial statements that take account of the findings, the Commission or the Agency will determine the amount to be corrected on the basis of those revised statements.

If the beneficiary proposes an alternative correction method and the Commission or the Agency accepts it, the Commission or the Agency must send a formal notification to the beneficiary concerned informing it:

(i) that it accepts the alternative method;

(ii) of the revised eligible costs determined by applying this method.

Otherwise the Commission or the Agency must send a formal notification to the beneficiary concerned informing it:

(i) that it does not accept the observations or the alternative method proposed;

(ii) of the revised eligible costs determined by applying the extrapolation method initially notified to the beneficiary.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the grant for the beneficiary concerned, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the beneficiary and approved by the Commission or the Agency or on the basis of the revised eligible costs after extrapolation, and the total amount paid to the beneficiary concerned under the Agreement for the implementation of its activities;

(b) If the findings concern improper implementation or a breach of another obligation (i.e. where ineligible costs cannot serve as a basis for determining the amount to be corrected), the procedure is as follows:

The Commission or the Agency shall formally notify the beneficiary concerned of the correction flat rate to be applied to the maximum amount of the grant specified in Article 3 or to part of it, according to the principle of proportionality, and invite the beneficiary to submit observations on the list of grants affected by the findings.

The beneficiary concerned shall have 60 days from the date of receipt of the notification to submit observations and to propose a duly substantiated alternative flat rate.

If the Commission or the Agency accepts the alternative flat rate proposed by the beneficiary, it shall formally notify the beneficiary concerned thereof and correct the grant amount by applying the accepted alternative flat rate.

If no observations have been submitted or if the Commission or the Agency does not accept the observations or the alternative flat rate proposed by the beneficiary, the Commission or the Agency shall formally notify the beneficiary concerned thereof and correct the grant amount by applying the flat rate initially notified to the beneficiary.

In the case of systemic or recurrent errors, irregularities, fraud or breach of obligations found after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the grant for the beneficiary concerned after flat-rate correction and the total amount paid to the beneficiary concerned under the Agreement for the implementation of its activities.

II.27.8 Checks and inspections by OLAF

The European Anti-Fraud Office (OLAF) shall have the same rights as the Commission and the Agency, notably right of access, for the purpose of checks and investigations.

By virtue of Council Regulation (Euratom, EC) No 2185/96[6] 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

[6] OJ L 292, 15.11.1996, p.2

and Regulation (EU, Euratom) No 883/2013[7] of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities.

Where appropriate, OLAF findings may lead to recovery by the Agency. They may also lead to criminal prosecution under national law.

II.27.9 Checks and audits by the European Court of Auditors

The European Court of Auditors shall have the same rights as the Agency and the Commission, notably right of access, for the purpose of checks and audits.

[7] OJ L 248, 18.09.2013, p.1