Education, Audiovisual and Culture Executive Agency

Creative Europe-MEDIA

CREATIVE EUROPE

MEDIA SUB-PROGRAMME

Established by Regulation No 1295/2013 of the European Parliament and of the Council of 11 December 2013 (ref. Official Journal N° L 347 of 20 December 2013) and its corrigendum (OJ L189/260 of 27.06.2014, p. 260).

GRANT AGREEMENT FOR AN ACTION

SUPPORT TO INTERNATIONAL CO-PRODUCTION FUNDS

AGREEMENT NUMBER –

TITLE:

The **Education, Audiovisual and Culture Executive Agency** (hereinafter referred to as "the Agency"), acting under powers delegated by the European Commission (hereinafter referred to as "the Commission"), represented for the purposes of signature of this Agreement by Mr. Matteo Solaro, Head of Sector at the Agency,

on the one part,

and

Name of Company

Address:

VAT number:

hereinafter referred to as "the beneficiary", represented for the purposes of signature of this Agreement by «Name»

on the other part,

DRAFT

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”)

Annex III Estimated budget of the action

Annex IV Model technical report (activity report)

Annex V Model financial statement

Annex VI Guidance notes – Report of Factual Findings on the Final Financial Report – Type I, see link: https://eacea.ec.europa.eu/sites/eacea-site/files/annex_iii_guidance_notes_audit_type_i_03-2014_en.pdf

Annex VII Model terms of reference for the operational verification report: **not applicable**

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 Annexes.

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SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER OF THE AGREEMENT

A European Union grant is awarded, under the terms and conditions set out in the Special Conditions, the General Conditions and the other Annexes to the Agreement, for the action entitled **«project title»** ("the action") as described in Annex I.

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

ARTICLE I.2 – ENTRY INTO FORCE OF THE AGREEMENT AND DURATION

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

I.2.2 The action and the period of eligibility of costs shall run as of 01/09/2016 ("the starting date of the action") and shall end on 31/12/2018.

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

The grant shall be of a **maximum amount of EUR _____** and shall take the form of:

(a) The reimbursement of _____% of the eligible costs of the action ("reimbursement of eligible costs"), which are estimated at _____ and which are:

(i) actually incurred ("reimbursement of actual costs") for the categories of costs indicated in Annex III.

(ii) *reimbursement of unit costs: not applicable*

(iii) *reimbursement of lump sum costs: not applicable*

(iv) *declared on the basis of a flat-rate of 7 % of the eligible direct costs ("reimbursement of flat rate costs") to cover the indirect costs*

(b) Unit contribution: not applicable.

(c) Lump sum contribution: not applicable.

(d) Flat-rate contribution: not applicable.

ARTICLE I.4 – ADDITIONAL PROVISIONS ON REPORTING, PAYMENTS AND PAYMENT ARRANGEMENTS

I.4.1 Reporting periods, payments and additional supporting documents

In addition to the provisions set out in Articles II.23 and II.24, the following reporting and payment arrangements shall apply:

Pre-financing payment

Upon entry into force of the Agreement, a pre-financing payment of 10% of the maximum amount specified in Article I.3 shall be paid to the beneficiary.

Further pre-financing payment

A second pre-financing payment of 60% of the maximum amount specified in Article I.3 shall be paid to the beneficiary, subject to the reception of a progress report and subject to having used at least 70% of the previous pre-financing instalment paid.

Technical report

- Reporting period 1: from the entry into force of the Agreement to 30/09/2017: A technical report should be submitted by the above mentioned date.

The acceptance of this report is not linked to any further payment.

Payment of the balance

- Sole reporting period from 01/09/2016 to the end of the period set out in Article I.2.2: the balance shall be paid to the beneficiary, subject to the receipt of a Final Financial Statement in accordance with Article II.23.2 and all other accompanying documents mentioned under the section "Other supporting documents" of this Article.

Other supporting documents:

The request for payment of the balance shall be accompanied by a certificate on the financial statements and underlying accounts ("Report of Factual Findings on the Final Financial Report – Type I") as set out in Annex VI for each grant for which the total contribution in the form of reimbursement of actual costs as referred to in Article I.3(a)(i) is less than EUR 750.000.

In addition to the above mentioned documents, when requesting the payment of the balance, the beneficiary shall produce a public summary in English providing information about the results of its project. The summary must be included in the final report submitted to the Agency. In the event of non-submission of the public summary, the Agency may suspend the time limit for payment in accordance with the provisions set out in Article II.24.5.

I.4.2 Time limit for payments

The time limit for the Agency to make payment of the balance is 60 days.

I.4.3 Language of requests for payments, technical reports and financial statements

All requests for payments, activity reports and financial statements shall be submitted preferably in English, or otherwise in French or in German.

ARTICLE I.5 – BANK ACCOUNT FOR PAYMENTS

All payments shall be made to the beneficiary's bank account, denominated in euro, as indicated below:

Name of bank:
Address of branch:
Account holder:
Full account number including bank codes:
IBAN account code:

ARTICLE I.6 - DATA CONTROLLER AND COMMUNICATION DETAILS OF THE PARTIES

I.6.1 Data controller

The entity acting as a data controller according to Article II.6 shall be the person who is representing the Agency for the purposes of the signature of this Agreement.

I.6.2 Communication details of the Agency

Any communication addressed to the Agency shall be sent to the following address:

Education, Audiovisual and Culture Executive Agency
Unit MEDIA – International Co-production Funds
BOUR 03/50 – Mr. Matteo Solaro, Head of sector
Avenue du Bourget, 1
1049 Brussels
BELGIUM
E-mail address: EACEA-COPROD-FUNDS @ec.europa.eu

I.6.3 Communication details of the beneficiary

Any communication from the Agency to the beneficiary shall be sent to the following address:

Name of Contact
Name of Company
Address

ARTICLE I.7 – ADDITIONAL PROVISIONS ON USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS) –

NOT APPLICABLE

ARTICLE I.8 – SPECIAL PROVISIONS ON BUDGET TRANSFERS

By way of derogation from the first subparagraph of Article II.22, budget transfers between budget categories are limited to 10% of the estimated eligible costs of the action specified in Article I.3

ARTICLE I.9 –SETTLEMENT OF DISPUTES WITH A NON EU BENEFICIARY

By derogation from Article II.18.2, where the beneficiary is legally established in a country other than a Member State of the European Union (the 'non EU beneficiary'), the Agency and/or the Union and/or the non EU beneficiary may bring before the Courts of Brussels any dispute between the Agency and/or the Union and the non EU beneficiary concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably. In such case where one party (i.e. the Agency, the Union or the non EU beneficiary) has brought proceedings before the Courts of Brussels concerning the interpretation, application or validity of the Agreement, the other party may

not bring a claim arising from the interpretation, application or validity of the Agreement in any other court than the Courts of Brussels already seized.

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

ARTICLE I.10.1 – INAPPLICABILITY OF THE NO-PROFIT PRINCIPLE

By way of derogation from Article II.25.3, the no-profit principle does not apply to grants the maximum amount of which, as referred to in Article I.3, is lower than or equal to EUR 60.000.

ARTICLE I.10.2 – SPECIAL PROVISIONS ON THE CONVERSION OF COSTS INCURRED IN ANOTHER CURRENCY INTO EURO

By way of derogation from Article II.23.4, any conversion into euro of costs incurred in other currencies shall be made by the beneficiary at the monthly accounting rate established by the Commission and published on its website (http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm) applicable on the month when the financial statement is drafted.

ARTICLE I.10.3 – CONDITIONS OF CALL FOR PROPOSALS

The Agency shall consider as "substantial obligation" within the meaning of Article II.16.2.1(b), *inter alia*, the non-compliance by the beneficiary, during the duration of the agreement, with the eligible criteria set out for the beneficiaries and the action in the Call for Proposals EACEA 11/2015.

ARTICLE I.10.4 – PERSONNEL, TRAVEL AND SUBSISTENCE COSTS

With reference to Article 11.2 of the Guidelines related to the Call for Proposals EACEA 11/2015, costs related to the implementation of the action such as personnel costs, promotion costs or expert costs for the selection committees shall be limited to 15% of the total eligible costs.

With reference to Article II.19.2(b), the subsistence costs of experts shall be considered as eligible costs in so far as they are within the limits set out in the Commission tables (available under the following link):
http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/index_en.htm), unless in some exceptional and duly justified cases. The amounts specified in the tables include all costs associated with the stay in the country concerned. If there is no overnight stay, these maximum amounts are reduced by 50%.

For air travel, only the cost of economy class is accepted. Any costs in excess of this rate will only be accepted in duly justified, exceptional cases. For train travel first class tickets are permitted. For car travel, the eligible amount will be limited to the amount corresponding to the price of a 1st class train ticket.

ARTICLE I.10.5 – VISIBILITY OF THE EUROPEAN UNION SUPPORT

For the purpose of the application of Article II.7.1 the beneficiary shall indicate in any communication or publication about the action, including its website, that the action has received funding from the European Union. Such acknowledgment shall be worded as follows: "*with the support of the Creative Europe - MEDIA Programme of the European Union*" and be accompanied by the Creative Europe - MEDIA logo and the European flag. The beneficiary shall use the logos, trademarks or items created by the Agency for these purposes and include in the publications/catalogue of the action covered by this Agreement the text provided by the Agency.

The obligation to comply with the publicity provision set out in article II.7 constitutes a substantial obligation. Without prejudice to the right to terminate the grant, in case of failure to fulfil this obligation, the Agency may apply a 20% reduction of the grant initially provided for.

ARTICLE I.10.6 – USE OF THE RESULTS OF THE ACTION BY THE AGENCY AND/OR THE UNION

Article II.8 relating to the use of the results of the action, including industrial and intellectual property rights, by the Agency and/or the Union, shall be interpreted without prejudice to the industrial and intellectual property rights owned by the beneficiary and within the limits of the activities conferred to the Agency and/or the Union. Article II.8.2 shall not apply.

SIGNATURES

For the beneficiary	For the Agency
Done at Date:	Done at Brussels, Date:

In duplicate in English

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;

(c) inform the Agency immediately of any change 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 I.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 equivalent electronic means.

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 I.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 I.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 I.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 the beneficiary, 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 beneficiary 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 or implemented poorly, partially or late.

ARTICLE II.4 - CONFLICT OF INTERESTS

II.4.1 The beneficiary 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 ties or any other shared interest ("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 beneficiary 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 beneficiary 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.

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

II.5.3 The Agency and the beneficiary 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 concerned party agrees to release the other party from the confidentiality obligations earlier;

(b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;

(c) the disclosure of the confidential information 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 I.6.1 solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

The beneficiary shall have the right of access to his/her personal data and the right to rectify any such data. Should the beneficiary have any queries concerning the processing of his/her personal data, he/she shall address them to the data controller, identified in Article I.6.1.

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

II.6.2 Processing of personal data by the beneficiary

Where the Agreement requires the processing of personal data by the beneficiary, the beneficiary may act only under the supervision of the data controller identified in Article I.6.1, in particular with regard to the purpose of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his or her rights.

The access to data that the beneficiary grants to its personnel shall be limited to the extent strictly necessary for the implementation, management and monitoring of the Agreement.

The beneficiary undertakes 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 persons from using 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 its 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 beneficiary, 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 beneficiary a right of exclusive use. The beneficiary 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 beneficiary is exempted from the obligation to obtain prior permission from the Agency to use the European Union emblem.

II.7.2 Disclaimers excluding Agency and Commission responsibility

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

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 beneficiary

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 beneficiary.

II.8.2 Pre-existing industrial and intellectual property rights

Where industrial and intellectual property rights, including rights of third parties, exist prior to the conclusion of the Agreement, the beneficiary shall establish a list which shall specify all rights of

ownership and use of the pre-existing industrial and intellectual property rights and disclose it to the Agency at the latest before the commencement of implementation.

The beneficiary shall ensure that it or its affiliated entities have all the rights to use any pre-existing industrial and intellectual property rights during the implementation of the Agreement.

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

Without prejudice to Articles II.1, II.3 and II.8.1, the beneficiary grants the Agency and/or the Union the right to use the results of the action for the following purposes:

(a) use for its own purposes, and in particular, making available to persons working for the Agency, the Union institutions, agencies and bodies and to Member States' institutions, as well as, copying and reproducing in whole or in part and in unlimited number of copies;

(b) distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the internet, including on the Europa website, as a downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;

(c) translation;

(d) giving access upon individual requests without the right to reproduce or exploit, as provided for by 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;

(e) storage in paper, electronic or other format;

(f) archiving in line with the document management rules applicable to the Agency and/or the Commission;

(g) rights to authorise or sub-licence the modes of exploitation set out in points (b) and (c) to third parties.

Additional rights of use for the Agency and/or the Union may be provided for in the Special Conditions.

The beneficiary shall warrant that the Agency and/or the Union has the right to use any pre-existing industrial and intellectual property 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 and/or the Union. The copyright information shall read: "© – year – name of the copyright owner. All rights reserved. Licenced to the European Union under conditions.".

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 beneficiary 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, it shall avoid any conflict of interests.

Beneficiary acting in its capacity of contracting authority within the meaning of 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 or contracting entity within the meaning of 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 shall abide by the applicable national public procurement rules.

II.9.2 The beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Agreement. The beneficiary shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis the Agency under the Agreement.

II.9.3 The beneficiary shall ensure that the conditions applicable to it under Articles II.3, II.4, II.5, II.8 and II.27 are also applicable to the contractor.

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

II.10.1 A "subcontract" is a procurement contract within the meaning of Article II.9, which covers the implementation by a third party of tasks forming part of the action as described in Annex I.

II.10.2 The beneficiary may subcontract tasks forming part of the action, provided that, in addition to the conditions specified in Article II.9 and the Special Conditions, the following conditions are complied with:

(a) subcontracting only covers the implementation of a limited part of the action;
(b) recourse to subcontracting is justified having regard to the nature of the action and what is necessary for its implementation;
(c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III;
(d) any recourse to subcontracting, if not provided for in Annex I, is communicated by the beneficiary and approved by the Agency without prejudice to Article II.12.2;
(e) the beneficiary ensures that the conditions applicable to it under Article II.7 are also applicable to the subcontractor.

ARTICLE II.11 - FINANCIAL SUPPORT TO THIRD PARTIES

II.11.1 Where the implementation of the action requires giving financial support to third parties, the beneficiary shall give such financial support in accordance with the conditions specified in Annex I, which shall at least contain:

(a) the maximum amount of financial support, which shall not exceed EUR 60 000 for each third party except where the financial support is the primary aim of the action as specified in Annex I;
(b) the criteria for determining the exact amount of the financial support;
(c) the different types of activity that may receive financial support, on the basis of a fixed list;
(d) the definition of the persons or categories of persons which may receive financial support;
(e) the criteria for giving the financial support.

II.11.2 By way of derogation from Article II.11.1, in case the financial support takes the form of a prize, the beneficiary shall give such financial support in accordance with the conditions specified in Annex I, which shall at least contain:

(a) the conditions for participation;

(b) the award criteria;

(c) the amount of the prize;

(d) the payment arrangements.

II.11.3 The beneficiary shall ensure that the conditions applicable to it under Articles II.3, II.4, II.5, II.7, II.8 and II.27 are also applicable to the third parties receiving financial support.

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 and shall be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the period set out in Article I.2.2, except in cases duly substantiated by the party requesting the amendment and accepted by the other party.

II.12.4 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 beneficiary 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. In the absence of such 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 beneficiary from its 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 or third parties involved in the implementation and which proves to be inevitable in spite of exercising all due diligence. 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, as well as labour disputes, strikes or financial difficulties cannot be invoked as *force majeure*.

II.14.2 A party faced with *force majeure* shall formally notify the other party without delay, stating the nature, 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 beneficiary

The beneficiary 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 beneficiary shall inform the Agency without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

Unless the Agreement is terminated in accordance with Article II.16.1 or points (b) or (c) of Article II.16.2.1, the beneficiary 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 the beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Agreement or if the beneficiary fails to comply with its obligations under the Agreement;

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

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

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

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

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Agency decides to pursue the suspension procedure, it may suspend the implementation by formally notifying the beneficiary thereof, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) 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 on the day of the receipt of the notification by the beneficiary or on a later date, where the notification so provides.

In order to resume the implementation, the beneficiary 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 is terminated in accordance with Article II.16.1 or points (b), (h) or (i) of Article II.16.2.1, 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 the beneficiary thereof and invite the beneficiary 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 as from the date of resumption of the action agreed by the parties in accordance with the first subparagraph. Such a date may be before the date on which the amendment enters into force.

Any costs incurred by the beneficiary, 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 in accordance with Article II.16.2 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 compensation on account of a suspension by the other party.

ARTICLE II.16 – TERMINATION OF THE AGREEMENT

II.16.1 Termination of the Agreement by the beneficiary

In duly justified cases the beneficiary 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 the beneficiary, specifying the grounds thereof, and the Agreement shall be deemed to have been terminated improperly, with the consequences set out in the third subparagraph of Article II.16.3.

II.16.2 Termination of the Agreement by the Agency

II.16.2.1 The Agency may decide to terminate the Agreement 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) if the beneficiary does not implement the action as specified in Annex I or fails to comply with another substantial obligation incumbent on it under the terms of the Agreement;
(c) in the event of *force majeure*, notified in accordance with Article II.14, or in the event of suspension by the beneficiary 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;
(d) if the beneficiary is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of any other similar proceedings

concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;

(e) if the beneficiary or any related person, as defined in the second subparagraph, have been found guilty of professional misconduct proven by any means;

(f) if the beneficiary is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or in which the action is implemented;

(g) if the Agency has evidence that the beneficiary or any related person, as defined in the second subparagraph, have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;

(h) if the Agency has evidence that the 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 in order to obtain the grant provided for in the Agreement; or

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

For the purposes of points (e), (g) and (h) "any related person" shall mean any natural person which has the power to represent the beneficiary or to take decisions on its behalf.

II.16.2.2 Before terminating the Agreement, the Agency shall formally notify the beneficiary of its intention to terminate, specifying the reasons thereof and inviting the beneficiary, within 45 calendar days from receipt of the notification, to submit observations and, in the case of point (b) of Article II.16.2.1, to inform the Agency about the measures taken to ensure that it continues to fulfil its obligations under the Agreement.

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

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Agency decides to pursue the termination procedure, it may terminate the Agreement by formally notifying the beneficiary thereof, specifying the reasons for the termination.

In the cases referred to in points (a), (b), (d) and (f) of Article II.16.2.1, the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (c), (e), (g), (h) and (i) of Article II.16.2.1, the termination shall take effect on the day following the date on which the formal notification was received by the beneficiary.

II.16.3 Effects of termination

Where the Agreement is terminated, payments by the Agency shall be limited to the amount determined in accordance with Article II.25 on the basis of the eligible costs incurred by the beneficiary and the actual level of implementation of the action on the date when the termination takes effect. Costs relating to current commitments, which are not due for execution until after the termination, shall not be taken into account. The beneficiary shall have 60 days from the date when the termination of the Agreement takes effect, as provided for in Articles II.16.1 and II.16.2.2, to produce a request for payment of the balance in accordance with Article II.23.2. If no request for payment of the balance is received within this time limit, the Agency shall not reimburse or cover any costs which are not included in a financial statement approved by it or which are not justified in a technical report approved by it. In accordance with Article II.26, the Agency shall recover any amount already paid, if its use is not substantiated by the technical reports and, where applicable, by the financial statements approved by the Agency.

Where the Agency, in accordance with point (b) of Article II.16.2.1, is terminating the Agreement on the grounds that the beneficiary has failed to produce the request for payment and, after a reminder, has still not complied with this obligation within the deadline set out in Article II.23.3, the first subparagraph shall apply, subject to the following:

(a) there shall be no additional time period from the date when the termination of the Agreement takes effect for the beneficiary to produce a request for payment of the balance in accordance with Article II.23.2; and
(b) the Agency shall not reimburse or cover any costs incurred by the beneficiary up to the date of termination or up to the end of the period set out in Article I.2.2, whichever is the earlier, which are not included in a financial statement approved by it or which are not justified in a technical report approved by it.

In addition to the first and second subparagraphs, where the Agreement is terminated improperly by the beneficiary within the meaning of Article II.16.1, or where the Agreement is terminated by the Agency on the grounds set out in points (b), (e), (g), (h) and (i) of Article II.16.2.1, the Agency may also reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit its observations.

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

ARTICLE II.17 – ADMINISTRATIVE AND FINANCIAL PENALTIES

II.17.1 By virtue of Articles 109 and 131(4) 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 with due regard to the principle of proportionality, if the beneficiary has committed substantial errors, irregularities or fraud, has made false declarations in supplying required information or has failed to supply such information at the moment of the submission of the application or during the implementation of the grant, or has been found in serious breach of its obligations under the Agreement, it shall be liable to:

(a) administrative penalties consisting of exclusion from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established and confirmed following a contradictory procedure with the beneficiary; and/or

(b) financial penalties of 2% to 10% of the maximum amount of the grant set out in Article I.3.

In the event of another infringement within five years following the establishment of the first infringement, the period of exclusion under point (a) may be extended to 10 years and the range of the rate referred to in point (b) may be increased to 4% to 20%.

II.17.2 The Agency shall formally notify the beneficiary of any decision to apply such penalties.

The Agency is entitled to publish such decision under the conditions and within the limits specified in Article 109(3) of Regulation (EU, EURATOM) No 966/2012.

An action may be brought against such decision before the General Court of the European Union, pursuant to Article 263 Treaty on the Functioning of the European Union ("TFEU").

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 Agency and/or the Union and the 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 or financial penalties, 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

II.19.1 Conditions for the eligibility of costs

"Eligible costs" of the action are costs actually incurred by the beneficiary which meet the following criteria:

(a) they are incurred in the period set out in Article I.2.2, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Articles II.23.2 and I.4.1;
(b) they are indicated in the estimated budget set out in Annex III;
(c) they are incurred in connection with the action as described in Annex I and are necessary for its implementation;
(d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary;
(e) they comply with the requirements of applicable tax and social legislation; and

(f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

II.19.2 Eligible direct costs

"Direct costs" of the action are those specific costs which are directly linked to the implementation of the action and can therefore be attributed directly to it. They may not include any indirect costs.

To be eligible, direct costs shall comply with the conditions of eligibility set out in Article II.19.1.

In particular, the following categories of costs are eligible direct costs, provided that they satisfy the conditions of eligibility set out in Article II.19.1 as well as the following conditions:

(a) the costs of personnel working under an employment contract with the beneficiary or an equivalent appointing act and assigned to the action, comprising actual salaries plus social security contributions and other statutory costs included in the remuneration, provided that these costs are in line with the beneficiary's usual policy on remuneration; those costs may also include additional remunerations, including payments on the basis of supplementary contracts regardless of the nature of those contracts, provided that they are paid in a consistent manner whenever the same kind of work or expertise is required, independently from the source of funding used.

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the costs of activities which the relevant public authority would not carry out if the action concerned was not undertaken;

(b) costs of travel and related subsistence allowances, provided that these costs are in line with the beneficiary's usual practices on travel and do not exceed the scales approved annually by the Commission;

(c) the depreciation costs of equipment or other assets (new or second-hand) as recorded in the accounting statements of the beneficiary, provided that the asset has been purchased in accordance with Article II.9 and that it is written off in accordance with the international accounting standards and the usual accounting practices of the beneficiary; the costs of rental or lease of equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

Only the portion of the equipment's depreciation, rental or lease costs corresponding to the period set out in Article I.2.2 and the rate of actual use for the purposes of the action may be taken into account. By way of exception, the Special Conditions may provide for the eligibility of the full cost of purchase of equipment, where justified by the nature of the action and the context of the use of the equipment or assets.

(d) costs of consumables and supplies, provided that they are purchased in accordance with Article II.9 and are directly assigned to the action;

(e) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with Article II.9;

(f) costs entailed by subcontracts within the meaning of Article II.10, provided that the conditions laid down in that Article are met;

(g) costs of financial support to third parties within the meaning of Article II.11, provided that the conditions laid down in that Article are met;

(h) duties, taxes and charges paid by the beneficiary, notably value added tax (VAT), provided that they are included in eligible direct costs, and unless specified otherwise in the Agreement.

II.19.3 Eligible indirect costs

"Indirect costs" of the action are those costs which are not specific costs directly linked to the implementation of the action and can therefore not be attributed directly to it. They may not include any costs identifiable or declared as eligible direct costs.

To be eligible, indirect costs shall represent a fair apportionment of the overall overheads of the beneficiary and shall comply with the conditions of eligibility set out in Article II.19.1.

Unless otherwise specified in the Article I.3, eligible indirect costs shall be declared on the basis of a flat rate of 7% of the total eligible direct costs.

II.19.4 Ineligible costs

In addition to any other costs which do not fulfill the conditions set out in Article II.19.1, the following costs shall not be considered eligible:

(a) return on capital;
(b) debt and debt service charges;
(c) provisions for losses or debts;
(d) interest owed;
(e) doubtful debts;
(f) exchange losses;
(g) costs of transfers from the Agency charged by the bank of a beneficiary;
(h) costs declared by the beneficiary in the framework of another action receiving a grant financed from the Union budget (including grants awarded by a Member State and financed from the Union budget and grants awarded by other bodies than the Agency for the purpose of implementing the Union budget); in particular, indirect costs shall not be eligible under a grant for an action awarded to the beneficiary when it already receives an operating grant financed from the Union budget during the period in question;
(i) contributions in kind from third parties;
(j) excessive or reckless expenditure;
(k) deductible VAT.

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

II.20.1 Reimbursement of actual costs

Where, in accordance with Article I.3(a)(i), the grant takes the form of the reimbursement of actual costs, the beneficiary must declare as eligible costs the costs it actually incurred for the action.

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 costs declared, such as contracts, invoices and accounting records. In addition, the beneficiary's usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements as well as with the amounts indicated in the supporting documents.

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

Where, in accordance with Article I.3(a)(ii) or (b), the grant takes the form of the reimbursement of unit costs or of a unit contribution, the beneficiary must declare as eligible costs or as requested contribution the amount obtained by multiplying the amount per unit specified in Article I.3(a)(ii) or (b) by the actual number of units used or produced.

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 number of units declared. 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 per unit.

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

Where, in accordance with Article I.3(a)(iii) or (c), 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 I.3(a)(iii) or (c), 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

Where, in accordance with Article I.3(a)(iv) or (d), the grant takes the form of the reimbursement of flat-rate costs or of a flat-rate contribution, the beneficiary must declare as eligible costs or as requested contribution the amount obtained by applying the flat rate specified in Article I.3(a)(iv) or (d).

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 eligible costs or requested contribution to which the flat rate applies. However, the beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, notably accounting statements, for the flat rate applied.

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

Where, in accordance with Article I.3(a)(v), the grant takes the form of the reimbursement of unit costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary must declare as eligible costs the amount obtained by multiplying the amount per unit calculated in accordance with its usual cost accounting practices by the actual number of units used or produced. 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 number of units declared.

Where, in accordance with Article I.3(a)(v), the grant takes the form of the reimbursement of lump sum costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary must declare as eligible costs the global amount calculated in accordance with its usual cost accounting practices, subject to the proper implementation of the corresponding tasks or part of the action. 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.

Where, in accordance with Article I.3(a)(v), the grant takes the form of the reimbursement of flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices, the beneficiary must declare as eligible costs the amount obtained by applying the flat rate calculated in accordance with its usual cost accounting practices. 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 eligible costs to which the flat rate applies.

In all three cases provided for in the first, second and third subparagraphs, the beneficiary does not need to identify the actual eligible costs covered, but it must ensure that the cost accounting practices used for the purpose of declaring eligible costs are in compliance with the following conditions:

(a) the cost accounting practices used constitute its usual cost accounting practices and are applied in a consistent manner, based on objective criteria independent from the source of funding;
(b) the costs declared can be directly reconciled with the amounts recorded in its general accounts; and
(c) the categories of costs used for the purpose of determining the costs declared are exclusive of any ineligible cost or costs covered by other forms of grant in accordance with Article I.3.

Where the Special Conditions provide for the possibility for the beneficiary to request the Agency to assess the compliance of its usual cost accounting practices, the beneficiary may submit a request for assessment, which, where required by the Special Conditions, shall be accompanied by a certificate on the compliance of the cost accounting practices (“certificate on the compliance of the cost accounting practices”).

The certificate on the compliance of the cost accounting practices shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer.

The certificate shall certify that the beneficiary's cost accounting practices used for the purpose of declaring eligible costs comply with the conditions laid down in the fourth subparagraph and with the additional conditions which may be laid down in the Special Conditions.

Where the Agency has confirmed that the usual cost accounting practices of the beneficiary are in compliance, costs declared in application of these practices shall not be challenged *ex post*, provided that the practices actually used comply with those approved by the Agency and that the beneficiary did not conceal any information for the purpose of their approval.

ARTICLE II.21 – ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARY

Where the Special Conditions contain a provision on entities affiliated to the beneficiary, costs incurred by such an entity are eligible, provided that they satisfy the same conditions under Articles II.19 and II.20 as apply to the beneficiary, and that the beneficiary ensures that the conditions applicable to it under Articles II.3, II.4, II.5, II.7, II.9, II.10, and II.27 are also applicable to the entity.

ARTICLE II.22 – BUDGET TRANSFERS

Without prejudice to Article II.10 and provided that the action is implemented as described in Annex I, the beneficiary is allowed to adjust the estimated budget set out in Annex III, by transfers between the different budget categories, without this adjustment being considered as an amendment of the Agreement within the meaning of Article II.12.

The first subparagraph does not apply to amounts which, in accordance with Article I.3(a)(iii) or (c), take the form of lump sums.

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

II.23.1 Requests for further pre-financing payments and supporting documents

Where, in accordance with Article I.4.1, the pre-financing shall be paid in several instalments and where Article I.4.1 provides for a further pre-financing payment subject to having used all or part of the previous instalment, the beneficiary may submit a request for a further pre-financing payment once the percentage of the previous instalment specified in Article I.4.1 has been used.

Where, in accordance with Article I.4.1, the pre-financing shall be paid in several instalments and where Article I.4.1 provides for a further pre-financing payment at the end of a reporting period, the beneficiary shall submit a request for a further pre-financing payment within 60 days following the end of each reporting period for which a new pre-financing payment is due.

In both cases, the request shall be accompanied by the following documents:

(a) a progress report on implementation of the action ("technical report on progress");
(b) a statement on the amount of the previous pre-financing instalment used to cover costs of the action ("statement on the use of the previous pre-financing instalment"), drawn up in accordance with Annex V; and
(c) where required by Article I.4.1, a financial guarantee.

II.23.2 Requests for interim payments or for payment of the balance and supporting documents

The beneficiary shall submit a request for an interim payment or for payment of the balance within 60 days following the end of each reporting period for which, in accordance with Article I.4.1, an interim payment or the payment of the balance is due.

This request shall be accompanied by the following documents:

(a) an interim report ("interim technical report") or, for the payment of the balance, a final report on implementation of the action ("final technical report"), drawn up in accordance with Annex IV; the interim or final technical report must contain the information needed to justify the eligible costs declared or the contribution requested on the basis of unit costs and lump sums where the grant takes the form of the reimbursement of unit or lump sum costs or of a unit or lump sum contribution in accordance with Article I.3(a)(ii), (iii), (b) or (c), as well as information on subcontracting as referred to in Article II.10.2(d);

(b) an interim financial statement ("interim financial statement") or, for the payment of the balance, a final financial statement ("final financial statement"); the interim or final financial statements must include a breakdown of the amounts claimed by the beneficiary and its affiliated entities; it must be drawn up in accordance with the structure of the estimated budget set out in Annex III and with Annex V and detail the amounts for each of the forms of grant set out in Article I.3 for the reporting period concerned;

(c) only for the payment of the balance, a summary financial statement ("summary financial statement"); this statement must include a breakdown of the amounts declared or requested by the beneficiary and its affiliated entities, aggregating the financial statements already submitted previously and indicating the receipts referred to in Article II.25.3.2 for the beneficiary and its affiliated entities; it must be drawn up in accordance with Annex V;

(d) where required by Article I.4.1 or where both the total contribution in the form of reimbursement of actual costs as referred to in Article I.3(a)(i) is at least EUR 750 000 and the beneficiary requests a reimbursement in that form of at least EUR 325 000 (when adding all previous reimbursements in that form for which a certificate on the financial statements has not been submitted), a certificate on the financial statements and underlying accounts ("certificate on the financial statements") ;

This certificate shall be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VI. It shall certify that the costs declared in the interim or final financial statement by the beneficiary or its affiliated entities for the categories of costs reimbursed in accordance with Article I.3(a)(i) are real, accurately recorded and eligible in accordance with the Agreement. In addition, for the payment of the balance, it shall certify that all the receipts referred to in Article II.25.3.2 have been declared; and

(e) where required by Article I.4.1, an operational verification report ("operational verification report"), produced by an independent third party approved by the Agency and drawn up in accordance with Annex VII.

This report shall state that the actual implementation of the action as described in the interim or final report complies with the conditions set out in the Agreement.

The beneficiary shall certify that the information provided in the request for interim payment or for payment of the balance is full, reliable and true. It shall also certify that the costs incurred can be considered eligible in accordance with the Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27. In addition, for the payment of the balance, it shall certify that all the receipts referred to in Article II.25.3.2 have been declared.

II.23.3 Non-submission of documents

Where the beneficiary has failed to submit a request for interim payment or payment of the balance accompanied by the documents referred to above within 60 days following the end of the corresponding reporting period and where the beneficiary still fails to submit such a request within 60 days following a written reminder sent by the Agency, the Agency reserves the right to terminate the

Agreement in accordance with Article II.16.2.1(b), with the effects described in the second and the third subparagraphs of Article II.16.3.

II.23.4 Currency for requests for payment and financial statements and conversion into euro

Requests for payment and financial statements shall be drafted in euro.

Where the beneficiary keeps its general accounts in a currency other than the euro, it shall convert costs incurred in another currency into euro at the average of the daily exchange rates published in the C series of *Official Journal of the European Union*, determined over the corresponding reporting period. Where 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.

Where the beneficiary keeps its general accounts in euro, it shall convert costs incurred in another currency into euro according to its usual accounting practices.

ARTICLE II.24 – PAYMENTS AND PAYMENT ARRANGEMENTS

II.24.1 Pre-financing

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

Without prejudice to Articles II.24.5 and II.24.6, where Article I.4.1 provides for a pre-financing payment upon entry into force of the Agreement, the Agency shall pay to the beneficiary within 30 days following that date or, where required by Article I.4.1, following receipt of the financial guarantee.

Where payment of pre-financing is conditional on receipt of a financial guarantee, the financial guarantee shall fulfill the following conditions:

(a) it is provided by a bank or an approved financial institution or, at the request of the beneficiary and acceptance by the Agency, by a third party;
(b) the guarantor stands as first-call guarantor and does not require the Agency and/or the Commission to have recourse against the principal debtor (i.e. the beneficiary); and
(c) it provides that it remains in force until the pre-financing is cleared against interim payments or payment of the balance by the Agency and, in case the payment of the balance is made in the form of a debit note, three months after the debit note is notified to the beneficiary. The Agency shall release the guarantee within the following month.

II.24.2 Further pre-financing payments

Without prejudice to Articles II.24.5 and II.24.6, on receipt of the documents referred to in Article II.23.1, the Agency shall pay to the beneficiary the new pre-financing instalment within 60 days.

Where the statement on the use of the previous pre-financing instalment submitted in accordance with Article II.23.1 shows that less than 70% of the previous pre-financing instalment paid has been used

to cover costs of the action, the amount of the new pre-financing to be paid shall be reduced by the difference between the 70% threshold and the amount used.

II.24.3 Interim payments

Interim payments are intended to reimburse or cover the eligible costs incurred for the implementation of the action during the corresponding reporting periods.

Without prejudice to Articles II.24.5 and II.24.6, on receipt of the documents referred to in Article II.23.2, the Agency shall pay to the beneficiary the amount due as interim payment within the time limit specified in Article I.4.2.

This amount shall be determined following approval of the request for interim payment and of the accompanying documents and in accordance with the fourth, fifth and sixth subparagraphs. Approval of the request for interim payment and of the accompanying documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Without prejudice to any ceiling set out in Article I.4.1 and to Articles II.24.5 and II.24.6, the amount due as interim payment shall be determined as follows:

(a) where, in accordance with Article I.3(a), the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate specified in that Article to the eligible costs of the action approved by the Agency for the concerned reporting period and the corresponding categories of costs, for the beneficiary and its affiliated entities; if Article I.4.1 specifies another reimbursement rate, this other rate shall be applied instead*;*
(b) where, in accordance with Article I.3(b), the grant 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 for the concerned reporting period for the beneficiary and its affiliated entities;
(c) where, in accordance with Article I.3(c), the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the beneficiary and its affiliated entities, subject to approval by the Agency of the proper implementation during the concerned reporting period of the corresponding tasks or part of the action in accordance with Annex I;
(d) where, in accordance with Article I.3(d), the grant 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 for the concerned reporting period for the beneficiary and its affiliated entities.

Where Article I.3 provides for a combination of different forms of grant, these amounts shall be added.

Where Article I.4.1 requires that the interim payment clears all or part of the pre-financing paid to the beneficiary, the amount of pre-financing to be cleared shall be deducted from the amount due as interim payment, as determined in accordance with the fourth and fifth subparagraphs.

II.24.4 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 I.2.2 the remaining part of the eligible costs incurred by the

beneficiary 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.24.5 and II.24.6, 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 I.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 regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

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

II.24.5 Suspension of the time limit for payment

The Agency may suspend the time limit for payment specified in Articles I.4.2 and II.24.2 at any time by formally notifying the beneficiary 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 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 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 in accordance with Article II.16.2.1(b), with the effects described in Article II.16.3.

II.24.6 Suspension of payments

The Agency may, at any time during the implementation of the Agreement, suspend the pre-financing payments, interim payments or payment of the balance:

(a) if the Agency has evidence that the beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant, or if the beneficiary fails to comply with its obligations under the Agreement;
(b) if the Agency has evidence that the beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or by the European Atomic Energy Community which were awarded to the beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant; or
(c) if the Agency suspects substantial errors, irregularities, fraud or breach of obligations committed by the beneficiary in the award procedure or in the implementation of the Agreement and needs to verify whether they have actually occurred.

Before suspending payments, the Agency shall formally notify the beneficiary of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a) and (b) of the first subparagraph, the necessary conditions for resuming payments. The beneficiary 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 beneficiary, the Agency decides to stop the procedure of payment suspension, the Agency shall formally notify the beneficiary thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Agency decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the beneficiary, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of the first subparagraph, the definitive conditions for resuming payments or, in the case referred to in point (c) of the first subparagraph, 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 beneficiary 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 the beneficiary thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation in accordance with Article II.15.1 or to terminate the Agreement in accordance with Article II.16.1, the beneficiary is not entitled to submit any requests for payments and supporting documents referred to in Article II.23.

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

II.24.7 Notification of amounts due

The Agency shall formally notify the amounts due, specifying whether it is a further pre-financing payment, an interim payment or the payment of the balance. In the case of payment of the balance, it shall also specify the final amount of the grant determined in accordance with Article II.25.

II.24.8 Interest on late payment

On expiry of the time limits for payment specified in Articles I.4.2, II.24.1 and II.24.2, and without prejudice to Articles II.24.5 and II.24.6, the beneficiary is 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 where the beneficiary is a Member State 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.24.5 or of payment by the Agency in accordance with Article II.24.6 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.24.10. 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.24.9 Currency for payments

Payments by the Agency shall be made in euro.

II.24.10 Date of payment

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

II.24.11 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 and/or the Commission shall be borne by the Agency and/or the Commission;
(b) costs of transfer charged by the bank of the 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.

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 as follows:

(a) where, in accordance with Article I.3(a), the grant takes the form of the reimbursement of eligible costs, the amount obtained by application of the reimbursement rate specified in that Article to the eligible costs of the action approved by the Agency for the corresponding categories of costs, for the beneficiary and its affiliated entities;
(b) where, in accordance with Article I.3(b), the grant takes the form of a unit contribution, the amount obtained by multiplying the unit contribution specified that Article by the actual number of units approved by the Agency for the beneficiary and its affiliated entities;
(c) where, in accordance with Article I.3(c), the grant takes the form of a lump sum contribution, the lump sum specified in that Article for the beneficiary and its affiliated entities, 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 I.3(d), the grant 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 for the beneficiary and its affiliated entities.

Where Article I.3 provides for a combination of different forms of grant, these amounts shall be added.

II.25.2 Maximum amount

The total amount paid to the beneficiary by the Agency may in no circumstances exceed the maximum amount specified in Article I.3.

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

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

II.25.3.1 The grant may not produce a profit for the beneficiary, unless specified otherwise in the Special Conditions. "Profit" shall mean a surplus of the receipts over the eligible costs of the action.

II.25.3.2 The receipts to be taken into account are the receipts established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the beneficiary, which fall within one of the following two categories:

(a) income generated by the action; or
(b) financial contributions specifically assigned by the donors to the financing of the eligible costs of the action reimbursed by the Agency in accordance with Article I.3(a)(i).

II.25.3.3 The following shall not be considered as a receipt to be taken into account for the purpose of verifying whether the grant produces a profit for the beneficiary:

(a) financial contributions referred to in point (b) of Article II.25.3.2, which may be used by the beneficiary to cover costs other than the eligible costs under the Agreement;
(b) financial contributions referred to in point (b) of Article II.25.3.2, the unused part of which is not due to the donor at the end of the period set out in Article I.2.2;

II.25.3.4 The eligible costs to be taken into account are the eligible costs approved by the Agency for the categories of costs reimbursed in accordance with Article I.3(a).

II.25.3.5 Where the final amount of the grant determined in accordance with Articles II.25.1 and II.25.2 would result in a profit for the beneficiary, the profit shall be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the action approved by the Agency for the categories of costs referred to in Article I.3(a)(i). This final rate shall be calculated on the basis of the final amount of the grant in the form referred to in Article I.3(a)(i), as determined in accordance with Articles II.25.1 and II.25.2.

II.25.4 Reduction for poor, partial or late implementation

Without prejudice to the right to terminate the Agreement referred to in Article II.16 and without prejudice to the right of the Agency to apply penalties referred to in Article II.17, if the action is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant initially provided for, in line with the actual implementation of the action according to the terms laid down in the Agreement.

ARTICLE II.26 – RECOVERY

II.26.1 Financial responsibility

Where an amount is to be recovered under the terms of the Agreement, the beneficiary shall repay the Agency the amount in question. The beneficiary shall be responsible for the repayment of any amount unduly paid by the Agency as a contribution towards the costs incurred by its affiliated entities.

II.26.2 Recovery procedure

Before recovery, the Agency shall formally notify the beneficiary of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery and inviting the beneficiary to make any observations within a specified period.

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

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

(a) by offsetting it against any amounts owed to the beneficiary by the Union or the European Atomic Energy Community (Euratom) (“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 I.4.1 ("drawing on the financial guarantee");

(c) 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.26.3 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.24.8. 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 and/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.26.4 Bank charges

Bank charges incurred in connection with the recovery of the sums owed to the Agency and/or the Commission shall be borne by the beneficiary 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 or audits and interim and final evaluations

The Agency and/or the Commission may carry out technical and financial checks and audits in relation to the use of the grant. It may also check the statutory records of the beneficiary 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 Agency and/or the Commission may carry out interim or final evaluation of the impact of the action measured against the objective of the Union programme concerned.

Checks, audits or evaluations made by the Agency and/or the Commission 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 in case the maximum amount specified in Article I.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 Agency or the Commission announcing it.

II.27.2 Duty to keep documents

The beneficiary shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by its 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 I.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 beneficiary shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

II.27.3 Obligation to provide information

The beneficiary shall provide any information, including information in electronic format, requested by the Agency and/or the Commission, or by any other outside body authorised by it, in the context of checks, audits or evaluations as referred to in Article II.27.1

In case the beneficiary does not comply with the obligation set out in the first subparagraph, the Agency and/or the Commission 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 beneficiary shall allow Agency and/or Commission staff and outside personnel authorised by the Agency and/or by the Commission 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.

It 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 the beneficiary refuses to provide access to the sites, premises and information in accordance with the first and second subparagraphs, the Agency and/or the Commission 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 Agency and/or the Commission or its authorised representative to the beneficiary, 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 within 90 days of expiry of the time limit for submission of observations, unless the observations submitted by the beneficiary lead to further audit work, checks or discussions by the Agency and/or the Commission or its authorised representative.

II.27.6 Effects of audit findings

On the basis of the final audit findings, the Agency and/or the Commission may take the measures which it considers necessary, including recovery 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, determined in accordance with Article II.25, and the total amount paid to the beneficiary under the Agreement for the implementation of the action.

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

II.27.7.1 The Agency and/or the Commission may take all measures which it considers necessary, including recovery of all or part of the payments made by it under the Agreement, in accordance with Article II.26, where the following conditions are fulfilled:

(a) the beneficiary is found, on the basis of an audit of other 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 received by the beneficiary within the period referred to in Article II.27.1.

II.27.7.2 The Agency and/or the Commission shall determine the amount to be corrected under the Agreement:

(a) wherever possible and practicable, on the basis of costs unduly declared as eligible under the Agreement.

For that purpose, the beneficiary shall revise the financial statements submitted under the Agreement taking account of the findings and resubmit them to the Agency and/or the Commission within 60 days from the date of receipt of the final audit report containing the findings of the systemic or recurrent errors, irregularities, fraud or breach of obligations.

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, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the beneficiary and approved by the Agency and/or by the Commission, and the total amount paid to the beneficiary under the Agreement for the implementation of the action;

(b) where it is not possible or practicable to quantify precisely the amount of ineligible costs under the Agreement, by extrapolating the correction rate applied to the eligible costs for the grants for which the systemic or recurrent errors or irregularities have been found.

The Agency and/or the Commission shall formally notify the extrapolation method to be applied to the beneficiary, which shall have 60 days from the date of receipt of the notification to submit observations and to propose a duly substantiated alternative method.

If the Agency and/or the Commission accepts the alternative method proposed by the beneficiary, it shall formally notify the beneficiary thereof and determine the revised eligible costs by applying the accepted alternative method.

If no observations have been submitted or if the Agency and/or the Commission does not accept the observations or the alternative method proposed by the beneficiary, the Agency and/or the Commission shall formally notify the beneficiary thereof and determine the revised eligible costs 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, determined in accordance with Article II.25 on the basis of the revised eligible costs after extrapolation, and the total amount paid to the beneficiary under the Agreement for the implementation of the action; or

(c) where ineligible costs cannot serve as a basis for determining the amount to be corrected, by applying a flat rate correction to maximum amount of the grant

specified in Article I.3 or part thereof, having regard to the principle of proportionality.

The Agency and/or the Commission shall formally notify the flat rate to be applied to the beneficiary, which 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 Agency and/or the Commission accepts the alternative flat rate proposed by the beneficiary, it shall formally notify the beneficiary thereof and correct the grant amount by applying the accepted alternative flat rate.

If no observations have been submitted or if the Agency and/or the Commission does not accept the observations or the alternative flat rate proposed by the beneficiary, the Agency and/or the Commission shall formally notify the beneficiary 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 after flat-rate correction and the total amount paid to the beneficiary under the Agreement for the implementation of the action.

II.27.8 Checks and inspections by OLAF

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

By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, EURATOM) No 883/2013 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 and/or the Commission.

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/or the Commission, notably right of access, for the purpose of checks and audits.