



# Promotion of Agricultural Products

## Multi-Beneficiary Model Grant Agreement

(CHAFEA Agri Promotion MGA — Multi)

Version 2.1  
6 September 2017

### Disclaimer

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



<b>HISTORY OF CHANGES</b>			
<b>Version</b>	<b>Publication Date</b>	<b>Change</b>	<b>Page</b>
1.0	04.02.2016	<ul style="list-style-type: none"> <li>▪ Draft version</li> </ul>	
2.0	21.12.2016	<ul style="list-style-type: none"> <li>▪ Cross-references corrected</li> <li>▪ Clarifications from H2020 V3.0 introduced</li> <li>▪ New Annex 5</li> </ul>	
2.1	06.09.2017	<ul style="list-style-type: none"> <li>▪ Small corrections in article 22.1.3 Disclaimer</li> </ul>	49



EUROPEAN COMMISSION  
CONSUMERS, HEALTH, AGRICULTURE AND FOOD  
EXECUTIVE AGENCY (CHAFEA)

Director



## MODEL GRANT AGREEMENT FOR THE PROMOTION OF AGRICULTURAL PRODUCTS <sup>1</sup> (CHAFEA AGRICULTURE PROMOTION MGA — MULTI)

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

### GRANT AGREEMENT

NUMBER [insert number] — [insert acronym]

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

**on the one part,**

the **Consumers, Health, Agriculture and Food Executive Agency (CHAFEA)** ('the Agency'), under the powers delegated by the European Commission ('the Commission'),

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<sup>1</sup> Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008 (OJ L 317, 4.11.2014, p. 56). Promotion of Agricultural Products grants support a coherent set of information and promotion activities for agricultural products ('information and promotion programme'), implemented at least by two beneficiaries from different Member States or at EU level. These activities may, for example consist in public relations, advertising, participation in events, fairs and exhibitions of national, European and international importance.

represented for the purposes of signature of this Agreement by [forename and surname], Director, or his/her duly authorised representative<sup>2</sup>,

**and**

**on the other part,**

1. ‘the coordinator’:

[full official name (short name)], established in [official address in full], [OPTION for beneficiaries with VAT: VAT number [insert number],] [OPTION for coordinators not receiving EU funding: as ‘beneficiary not receiving EU funding’ (see Article 8a),] represented for the purposes of signing the Agreement by [forename and surname, function]

and the following other beneficiaries, if they sign their ‘Accession Form’ (see Annex 3 and Article 40):

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

[OPTION for beneficiaries not receiving EU funding: . [full official name (short name)], established in [official address in full], [OPTION for beneficiaries with VAT: VAT number [insert number],] as ‘beneficiary not receiving EU funding’ (see Article 8a),]

[same for each beneficiary]

[OPTION if the JRC is a beneficiary: and . the Joint Research Centre (JRC) established in [official address in full], if it signs the administrative arrangement (see Annex 3a).]

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

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

By signing the Agreement or the Accession Form [OPTION if the JRC is a beneficiary: or the Administrative Arrangement], the beneficiaries accept the grant and agree to implement it under their own responsibility and in accordance with the Agreement, with all the obligations and conditions it sets out.

The Agreement is composed of:

Terms and Conditions

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<sup>2</sup> The person representing the Agency must be an authorising officer (by delegation or sub-delegation) designated in accordance with document 60008 of 22.02.2001 ‘Mise en place de la Charte des ordonnateurs’.

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

EU Model Grant Agreements: CHAFEA Agri Promotion MGA — Multi: V2.1 – 06.09.2017

Annex 1 Description of the action

Annex 2 Estimated budget for the action

Annex 2a Not applicable

Annex 3 Accession Forms

*[OPTION if the JRC participates: Annex 3a Administrative Arrangement (JRC AA)]*

Annex 4 Model for the financial statements

Annex 5 Model for the certificate on the financial statements (CFS)

**TERMS AND CONDITIONS**

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## **CHAPTER 1 GENERAL**

### **ARTICLE 1 — SUBJECT OF THE AGREEMENT**

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

## **CHAPTER 2 ACTION**

### **ARTICLE 2 — ACTION TO BE IMPLEMENTED**

The grant is awarded for the action entitled [insert title of the action] — [insert acronym] ('action'), as described in Annex 1.

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

The duration of the action will be [insert number] months as of [*OPTION by default: the first day of the month following the date the Agreement enters into force (see Article 42)*<sup>3</sup>] [*OPTION if needed for the action: [insert date]*<sup>4,5</sup>] ('starting date of the action').

### **ARTICLE 4 — ESTIMATED BUDGET AND BUDGET TRANSFERS**

#### **4.1 Estimated budget**

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

It contains the estimated eligible costs and the forms of costs, broken down by beneficiary [(and affiliated entity)] and budget category (see Articles 5, 6 [and 11]). [*OPTION to be used if Article 8a applies: It also shows the estimated costs of the beneficiaries not receiving EU funding (see Article 8a).*]

#### **4.2 Budget transfers**

The estimated budget breakdown indicated in Annex 2 may be adjusted — without an amendment (see Article 39) — by transfers of amounts between beneficiaries, budget categories and/or forms of costs set out in Annex 2, if the action is implemented as described in Annex 1.

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<sup>3</sup> Text in *italics* shows the options of the Model Grant Agreement that are applicable to this Agreement.

<sup>4</sup> This date must always be the first day of a month.

It must be later than the date of entry into force of the agreement, unless authorised otherwise by the authorising officer, if the applicant can demonstrate the need to start the action before the entry into force of the grant agreement. In any case, the starting date should not be earlier than the date of the submission of the grant application (Article 130 FR).

It may not be later than 6 months after the date of entry into force of the grant agreement.

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

However, the beneficiaries may not add costs relating to subcontracts not provided for in Annex 1, unless such additional subcontracts are approved by an amendment or in accordance with Article 10.

*[OPTION if lump sum foreseen in Article 5.2: Moreover, lump sums set out in Annex 2 can never be adjusted.]*

## **CHAPTER 3 GRANT**

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

#### **5.1 Maximum grant amount**

The ‘**maximum grant amount**’ is EUR [insert amount (insert amount in words)].

#### **5.2 Form of grant, reimbursement rates and forms of costs**

The grant reimburses *[OPTION 1 by default if all beneficiaries [and all affiliated entities] are subject to the same reimbursement rate: [80%][85%][90%] of the action’s eligible costs][OPTION 2 if some beneficiaries [or affiliated entities] are established in a Member State receiving financial assistance: [85%][90%] of the eligible costs of the [beneficiary(ies)][and][affiliated entity(ies)] that are established in an EU Member State receiving financial assistance and [80%][85%] of the eligible costs of the [beneficiary(ies)][and][affiliated entity(ies)] that are established in other EU Member States]* (see Article 6) (‘**reimbursement of eligible costs grant**’) (see Annex 2).

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

Eligible costs (see Article 6) must be declared under the following forms (‘**forms of costs**’ or ‘**cost forms**’):

- (a) for **direct personnel costs**: as actually incurred costs (‘**actual costs**’);
- (b) for **direct costs of subcontracting**: as actually incurred costs (**actual costs**);
- (c) for **other direct costs**: as actually incurred costs (**actual costs**);
- (d) for **indirect costs**: on the basis of a flat-rate applied as set out in Article 6.2.D (‘**flat-rate costs**’).

The remaining costs of the action must be borne by the beneficiaries. Financial contributions given by third parties to a beneficiary, specifically to be used for costs that are eligible under the action, are not allowed (except for financial contributions to a beneficiary organisation made by its members).

### 5.3 Final grant amount — Calculation

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

This amount is calculated by the Agency — when the payment of the balance is made — in the following steps:

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

Step 2 — Limit to the maximum grant amount

Step 3 — Reduction due to the no-profit rule

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

#### 5.3.1 Step 1 — Application of the reimbursement rate to the eligible costs

The reimbursement rate(s) (see Article 5.2) are applied to the eligible costs (actual costs[, *unit costs*] and flat-rate costs [*and lump sum costs*]; see Article 6) declared by the beneficiaries [*and affiliated entities*] (see Article 15) and approved by the Agency (see Article 16).

#### 5.3.2 Step 2 — Limit to the maximum grant amount

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

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

*[OPTION 1 by default: The grant must not produce a profit.*

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

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

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

*The following are considered **receipts**:*

*(a) income generated by the action;*

*(b) financial contributions given to the beneficiaries by their members, specifically to be used for costs that are eligible under the action.*

*The following are however **not** considered receipts:*

(a) *financial contributions by beneficiaries' members or other third parties, if they may be used to cover costs other than the eligible costs (see Article 6);*

(b) *financial contributions by beneficiaries' members or other third parties with no obligation to repay any amount unused at the end of the period set out in Article 3.*

*If there is a profit, it will be deducted in proportion to the final rate of reimbursement of the eligible actual costs approved by the Agency (as compared to the amount calculated following Steps 1 and 2).]*

*[OPTION 2 for low value grants: Not applicable]*

#### **5.3.4 Step 4 — Reduction due to substantial errors, irregularities or fraud or serious breach of obligations**

If the grant is reduced (see Article 27), the Agency will calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations, in accordance with Article 27.2) from the maximum grant amount set out in Article 5.1.

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

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

#### **5.4 Revised final grant amount — Calculation**

If — after the payment of the balance (in particular, after checks, reviews, audits or investigations; see Article 17) — the Agency rejects costs (see Article 26) or reduces the grant (see Article 27), it will calculate the '**revised final grant amount**' for the action or for the beneficiary concerned.

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

- in case of **rejection of costs**: by applying the reimbursement rate(s) to the *revised* eligible costs approved by the Agency for the beneficiary concerned;
- in case of **reduction of the grant**: by deducting the amount of the reduction (calculated in proportion to the seriousness of the errors, irregularities or fraud or breach of obligations, in accordance with Article 27.2) from the maximum grant amount set out in Article 5.1 or from the maximum EU contribution indicated for the beneficiary in the estimated budget (see Annex 2).

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

## ARTICLE 6 — ELIGIBLE AND INELIGIBLE COSTS

### 6.1 General conditions for costs to be eligible

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

(a) for **actual costs**:

- (i) they must be actually incurred by the beneficiary;
- (ii) they must be incurred in the period set out in Article 3, with the exception of costs relating to the submission of [*OPTION for actions with several RPs and interim payments: the periodic report for the last reporting period and*] the final report (see Article 15) and the study evaluating the results of the measures carried out (see Article 14);
- (iii) they must be indicated in the estimated budget set out in Annex 2;
- (iv) they must be incurred in connection with the action as described in Annex 1 and necessary for its implementation;
- (v) they must be identifiable and verifiable, in particular recorded in the beneficiary’s accounts in accordance with the accounting standards applicable in the country where the beneficiary is established and with the beneficiary’s usual cost accounting practices;
- (vi) they must comply with the applicable national law on taxes, labour and social security, and
- (vii) they must be reasonable, justified and must comply with the principle of sound financial management, in particular regarding economy and efficiency;

(b) for **unit costs**: not applicable;

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

- (i) they must be calculated by applying the flat-rate set out in Annex 2, and
- (ii) the costs (actual costs) to which the flat-rate is applied must comply with the conditions for eligibility set out in this Article;

(d) for **lump sum costs**: not applicable.

### 6.2 Specific conditions for costs to be eligible

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

A. direct personnel costs;

- B. direct costs of subcontracting;
- C. other direct costs;
- D. indirect costs.

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

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

## A. Direct personnel costs

### Types of eligible personnel costs

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

They may also include **additional remuneration** for personnel assigned to the action (including payments on the basis of supplementary contracts regardless of their nature), if:

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

A.2 The **costs for natural persons working under a direct contract** with the beneficiary other than an employment contract or **seconded by a third party against payment** are eligible personnel costs, if:

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

### Calculation

Personnel costs must be calculated by the beneficiaries as follows:

- for persons **working exclusively on the action:**

{ monthly rate for the person



multiplied by  
number of actual months worked on the action}.

The months declared for these persons may not be declared for any other EU or Euratom grant.

The '**monthly rate**' is calculated as follows:

{annual personnel costs for the person  
divided by  
12}

using the personnel costs for each full financial year covered by the reporting period concerned. If a financial year is not closed at the end of the reporting period, the beneficiaries must use the monthly rate of the last closed financial year available.

- for all **other** persons:

{daily rate for the person  
multiplied by  
number of actual days worked on the action (rounded up or down to the nearest half-day)}.

The number of actual days declared for a person must be identifiable and verifiable (see Article 13).

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

{number of annual productive days for the year (see below)  
minus  
total number of days declared by the beneficiary, for that person for that year, for other EU or Euratom grants}.

The '**daily rate**' is calculated as follows:

{annual personnel costs for the person  
divided by  
number of individual annual productive days}

using the personnel costs and the number of annual productive days for each full financial year covered by the reporting period concerned. If a financial year is not

closed at the end of the reporting period, the beneficiaries must use the daily rate of the last closed financial year available.

The ‘number of individual annual productive days’ is the total actual days worked by the person in the year. It may not include holidays and other absences (such as sick leave, maternity leave, special leave, etc). However, it may include overtime and time spent in meetings, trainings and other similar activities.

**B. Direct costs of subcontracting** (including related duties, taxes and charges, such as non-deductible value added tax (VAT) paid by beneficiaries that are not public bodies acting as public authority) are eligible if the conditions in Article 10.1.1 are met.

### **C. Other direct costs**

**C.1 Travel costs and related subsistence allowances** (including related duties, taxes and charges, such as non-deductible value added tax (VAT) paid by beneficiaries that are not public bodies acting as public authority) are eligible if they are in line with the beneficiary’s usual practices on travel.

**C.2 The depreciation costs of equipment, infrastructure or other assets** (new or second-hand) as recorded in the beneficiary’s accounts are eligible, if they were purchased in accordance with Article 9.1.1 and written off in accordance with international accounting standards and the beneficiary’s usual accounting practices.

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

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

**C.3 Costs of other goods and services** (including related duties, taxes and charges, such as non-deductible value added tax (VAT) paid by beneficiaries that are not public bodies acting as public authority) are eligible, if they are purchased specifically for the action and in accordance with Article 9.1.1.

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

### **D. Indirect costs**

**Indirect costs** are eligible if they are declared on the basis of the flat-rate of 4% of the eligible personnel costs (see Article 5.2, Point A above).

Beneficiaries receiving an operating grant<sup>6</sup> financed by the EU or Euratom budget cannot declare indirect costs for the period covered by the operating grant.

### 6.3 Conditions for costs of affiliated entities to be eligible

Not applicable

### 6.4 Ineligible costs

**'Ineligible costs'** are:

- (a) costs that do not comply with the conditions set out above (Article 6.1 to 6.3), in particular:
  - (i) costs related to return on capital;
  - (ii) debt and debt service charges;
  - (iii) provisions for future losses or debts;
  - (iv) interest owed;
  - (v) doubtful debts;
  - (vi) currency exchange losses;
  - (vii) bank costs charged by the beneficiary's bank for transfers from the Agency;
  - (viii) excessive or reckless expenditure;
  - (ix) deductible VAT;
  - (x) costs incurred during suspension of the implementation of the action (see Article 33);
  - (xi) in-kind contributions provided by third parties;
- (b) costs declared under another EU or Euratom grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the Agency for the purpose of implementing the EU or Euratom budget); in particular, indirect costs if the beneficiary is already receiving an operating grant financed by the EU or Euratom budget in the same period[;/.]

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<sup>6</sup> For the definition, see Article 121(1)(b) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 218, 26.10.2012, p.1) ('**Financial Regulation No 966/2012**): '**operating grant**' means direct financial contribution, by way of donation, from the budget in order to finance the functioning of a body which pursues an aim of general EU interest or has an objective forming part of and supporting an EU policy.

(c) costs for staff of a national (or local) administration, for activities that are part of the administration's normal activities (i.e. not undertaken only because of the grant);

(d) costs (especially travel and subsistence costs) for staff or representatives of EU institutions, bodies or agencies;

*[(e) **OPTION for cost categories explicitly excluded in the work programme and call for proposals**<sup>7</sup>: [insert name of excluded cost category]].*

## **6.5 Consequences of declaration of ineligible costs**

Declared costs that are ineligible will be rejected (see Article 26).

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

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<sup>7</sup> If no call for proposals, read as 'invitation to submit a proposal'.

## **CHAPTER 4 RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **SECTION 1 RIGHTS AND OBLIGATIONS RELATED TO IMPLEMENTING THE ACTION**

#### **ARTICLE 7 — GENERAL OBLIGATION TO PROPERLY IMPLEMENT THE ACTION**

##### **7.1 General obligation to properly implement the action**

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

##### **7.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 27).

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

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

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

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

- purchase goods, works and services (see Article 9);
- call upon subcontractors to implement action tasks described in Annex 1 (see Article 10);
- *[call upon affiliated entities to implement action tasks described in Annex 1 (see Article 11)].*

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

#### **ARTICLE 8a — IMPLEMENTATION OF ACTION TASKS BY BENEFICIARIES NOT RECEIVING EU FUNDING**

Not applicable

#### **ARTICLE 9 — PURCHASE OF GOODS, WORKS OR SERVICES**

##### **9.1 Rules for purchasing goods, works or services**

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

The beneficiaries must make such purchases ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 20).

The beneficiaries must ensure that the Agency, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 17 and 18 also towards their contractors.

9.1.2 Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2004/18/EC<sup>8</sup> (or 2014/24/EU<sup>9</sup>) or a ‘contracting entity’ within the meaning of Directive 2004/17/EC<sup>10</sup> (or 2014/25/EU<sup>11</sup>) must comply with the applicable national law on public procurement.

## **9.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under Article 9.1.1, the costs related to the contract concerned will be ineligible (see Article 6) and will be rejected (see Article 26).

If a beneficiary breaches any of its obligations under Article 9.1.2, the grant may be reduced (see Article 27).

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

## **ARTICLE 10 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS**

### **10.1 Rules for subcontracting action tasks**

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

Subcontracting may cover only a limited part of the action.

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<sup>8</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts (OJ L 134, 30.04.2004, p. 114).

<sup>9</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>10</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.04.2004, p. 1).

<sup>11</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

The beneficiaries must award the subcontracts ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 20).

Subcontracts may also be awarded to entities that have a structural link with the beneficiary<sup>12</sup>, but only if the price is limited to the costs actually incurred by the entity (i.e. without any profit margin).

The tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1 and the total estimated costs of subcontracting per beneficiary must be set out in Annex 2. Subcontracts to entities that have a structural link with the beneficiary must be detailed in Annex 1.

The Agency may however approve subcontracts not set out in Annex 1 and 2 without amendment (see Article 39), if:

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

The beneficiaries must ensure that the Agency, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 17 and 18 also towards their subcontractors.

They must moreover ensure that entities that have a structural link with them keep records on their costs.

10.1.2 The beneficiaries must ensure that their obligations under Articles 20, 21, 22 and 30 also apply to the subcontractors.

Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2004/18/EC (or 2014/24/EU) or a ‘contracting entity’ within the meaning of Directive 2004/17/EC (or 2014/25/EU) must comply with the applicable national law on public procurement.

## 10.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under Article 10.1.1, the costs related to the subcontract concerned will be ineligible (see Article 6) and will be rejected (see Article 26).

If a beneficiary breaches any of its obligations under Article 10.1.2, the grant may be reduced (see Article 27).

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

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<sup>12</sup> ‘Entities that have a structural link with the beneficiary’ are entities that have a link with the beneficiary, in particular, a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation.

## ARTICLE 11 — IMPLEMENTATION OF ACTION TASKS BY AFFILIATED ENTITIES

Not applicable

## ARTICLE 11a — FINANCIAL SUPPORT TO THIRD PARTIES

Not applicable

## SECTION 2 RIGHTS AND OBLIGATIONS RELATED TO THE GRANT ADMINISTRATION

### ARTICLE 12 — GENERAL OBLIGATION TO INFORM

#### 12.1 General obligation to provide information upon request

The beneficiaries must provide — during implementation of the action or afterwards and in accordance with Article 25.2 — any information requested in order to verify eligibility of the costs, proper implementation of the action and compliance with any other obligation under the Agreement.

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

Each beneficiary must keep information stored in the Participant Portal Beneficiary Register (via the electronic exchange system; see Article 36) up to date, in particular, its name, address, legal representatives, legal form and organisation type.

Each beneficiary must immediately inform the coordinator — which must immediately inform the Agency and the other beneficiaries — of any of the following:

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

#### 12.3 Consequences of non-compliance



If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 27).

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

## **ARTICLE 13 — KEEPING RECORDS — SUPPORTING DOCUMENTATION**

### **13.1 Obligation to keep records and other supporting documentation**

The beneficiaries must — for a period of [*OPTION 1 by default: five*][*OPTION 2 for low value grants*<sup>13</sup>: *three*] **years after the payment of the balance** — keep records and other supporting documentation, in order to prove the proper implementation of the action and the costs they declare as eligible.

They must make them available upon request (see Article 12) or in the context of checks, reviews, audits or investigations (see Article 17).

If there are on-going checks, reviews, audits, investigations, litigation or other pursuits of claims under the Agreement (including the extension of findings; see Article 17), the beneficiaries must keep the records and other supporting documentation until the end of these procedures.

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

#### **13.1.1 Records and other supporting documentation on the technical implementation**

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

#### **13.1.2 Records and other documentation to support the costs declared**

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

- (a) for **actual costs**: adequate records and other supporting documentation to prove the costs declared, such as contracts, subcontracts, invoices and accounting records. In addition, the beneficiaries' usual cost accounting practices and internal control procedures must enable direct reconciliation between the amounts declared, the amounts recorded in their accounts and the amounts stated in the supporting documentation;

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<sup>13</sup> For the definition, see Article 185 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31/12/2012, p. 1) ('**Rules of Application** Regulation No 1268/2012'): '**low value grants**' are lower or equal to EUR 60 000.

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

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

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

*[OPTION to be added if Article 11 applies: For costs declared by affiliated entities (see Article 11), it is the beneficiary that must keep the originals of the financial statements and the certificates on the financial statements of its affiliated entities.]*

## 13.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under this Article, costs insufficiently substantiated will be ineligible (see Article 6) and will be rejected (see Article 26), and the grant may be reduced (see Article 27).

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

## ARTICLE 14 — SUBMISSION OF DELIVERABLES

### 14.1 Obligation to submit deliverables

The coordinator must submit:

- the **deliverables** identified in Annex 1, in accordance with the timing and conditions set out in it;
- copies of all the **material** and **audio-visuals** linked to the deliverables, in accordance with the timing defined for each deliverable in Annex 1, and
- a **study** by an independent external body **evaluating the results** of the promotional and information measures carried out, by the deadline for the final report.

This study must use the impact indicators set out in Annex 1.

## 14.2 Consequences of non-compliance

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

## ARTICLE 15 — REPORTING — PAYMENT REQUESTS

### 15.1 Obligation to submit reports

The coordinator must submit to the Agency (see Article 36) the technical and financial report(s) set out in this Article. *[OPTION 1 for actions with one RP and NO interim payments: This report includes][OPTION 2 for actions with several RPs and interim payments: These reports include]* the request(s) for payment and must be drawn up using the forms and templates provided in the electronic exchange system (see Article 36).

### 15.2 Reporting periods

The action *[OPTION 1 for actions with one RP and NO interim payments: has one 'reporting period']**[OPTION 2 for actions with several RPs and interim payments: is divided into the following 'reporting periods']*:

- RP1: from month 1 to month [X]<sup>14</sup>
- [- RP2: from month [X+1] to month [Y]*
- RP3: from month [Y+1] to month [Z]]*

#### 15.2a Request(s) for further pre-financing payment(s)

Not applicable

*[OPTION 1 for actions with one RP and NO interim payments: 15.3 Periodic reports — Requests for interim payments*

*Not applicable*

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

*The coordinator must submit — within 90 days following the end of the reporting period — a final report, which includes the request for payment of the balance.*

*The final report must include the following:*

- (a) a *'final technical report'* containing:
  - (i) an *explanation of the work carried out by the beneficiaries;*

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<sup>14</sup> Each reporting period should last 12 months.

- (ii) *an overview of the implementation of the action, including deliverables identified in Annex 1.*

*This report must use the output, results and impact indicators set out in Annex 1 and include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out;*

- (iii) *a summary for publication by the Agency;*
- (iv) *the answers to the ‘questionnaire’: covering issues related to the action implementation and its impact;*

(b) *a ‘final financial report’ containing:*

- (i) *an ‘individual financial statement’ (see Annex 4) from each beneficiary [and from each affiliated entity], for the reporting period.*

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

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

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

*Each beneficiary [and each affiliated entity] must certify that:*

- *the information provided is full, reliable and true;*
- *the costs declared are eligible (see Article 6);*
- *the costs can be substantiated by adequate records and supporting documentation (see Article 13) that will be produced upon request (see Article 12) or in the context of checks, reviews, audits and investigations (see Article 17), and*
- *that all the receipts have been declared (see Article 5.3.3);*

- (ii) *an explanation of the use of resources and the information on subcontracting (see Article 10) from each beneficiary [and from each affiliated entity], for the reporting period;*

- (iii) *[OPTION A if the JRC is a beneficiary: information on the amount of the balance to be paid by the [Commission][Agency] to the Joint Research Centre (JRC);][OPTION B: not applicable;]*
- (iv) *a ‘final summary financial statement’, created automatically by the electronic exchange system, consolidating the individual financial statements for the reporting period and including the **request for payment of the balance**;*
- (v) *a ‘certificate on the financial statements’ (drawn up in accordance with Annex 5) for each beneficiary [and for each affiliated entity], if:*
- *it requests an EU contribution of EUR 325 000 or more as reimbursement of actual costs and*
  - *the maximum EU contribution indicated, for that beneficiary [or affiliated entity], in the estimated budget (see Annex 2) as reimbursement of actual costs is EUR 750 000 or more[.]*

*[OPTION to be used for public body/international organisation beneficiaries/affiliated entities for which the RAO waives the certificate<sup>15</sup>: — except for the following beneficiaries [or affiliated entities]:*

- *[short name of beneficiary/affiliated entity]*
- *[short name of beneficiary/affiliated entity].]*

**[OPTION 2 for actions with several RPs and interim payments: 15.3 Periodic reports — Requests for interim payments**

*The coordinator must submit a periodic report within 60 days following the end of each reporting period.*

*The periodic report must include the following:*

- (a) *a ‘periodic technical report’ containing:*
- (i) *an explanation of the work carried out by the beneficiaries;*
  - (ii) *an overview of the progress towards the objectives of the action, including deliverables identified in Annex 1.*

*This report must use the output and results indicators set out in Annex 1 and include explanations justifying the differences between work expected to be carried out in accordance with Annex 1 and that actually carried out;*

- (iii) *a summary for publication by the Agency;*

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<sup>15</sup> See Article 207 RAP.

(iv) *the answers to the ‘questionnaire’*: covering issues related to the action implementation and its impact;

(b) a **‘periodic financial report’** containing:

(i) an **‘individual financial statement’** (see Annex 4) from each beneficiary [and from each affiliated entity], for the reporting period concerned.

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

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

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

*The individual financial statements of the last reporting period must also detail the **receipts of the action** (see Article 5.3.3).*

*Each beneficiary [and each affiliated entity] must **certify** that:*

- *the information provided is full, reliable and true;*
- *the costs declared are eligible (see Article 6);*
- *the costs can be substantiated by adequate records and supporting documentation (see Article 13) that will be produced upon request (see Article 12) or in the context of checks, reviews, audits and investigations (see Article 17), and*
- *for the last reporting period: that all the receipts have been declared (see Article 5.3.3);*

(ii) an **explanation of the use of resources** and the information on subcontracting (see Article 10) from each beneficiary [and from each affiliated entity], for the reporting period concerned;

(iii) [**OPTION A if the JRC is a beneficiary**: information on the amount of each interim payment and payment of the balance to be paid by the [Commission][Agency] to the Joint Research Centre (JRC);][**OPTION B**: not applicable;]

(iv) a **‘periodic summary financial statement’**, created automatically by the electronic exchange system, consolidating the individual financial statements

for the reporting period concerned and including — except for the last reporting period — the **request for interim payment**;

- (v) a **'certificate on the financial statements'** (drawn up in accordance with Annex 5) for each beneficiary [and for each affiliated entity], if:
- the (cumulative) amount of EU contribution it requests as reimbursement of actual costs (and for which no certificate has yet been submitted) is EUR 325 000 or more and
  - the maximum EU contribution indicated, for that beneficiary [or affiliated entity], in the estimated budget (see Annex 2) as reimbursement of actual costs is EUR 750 000 or more[.]

**[OPTION to be used for public body/international organisation beneficiaries/affiliated entities for which the RAO waives the certificate<sup>16</sup>]:**  
— except for the following beneficiaries [or affiliated entities]:

- [short name of beneficiary/affiliated entity]
- [short name of beneficiary/affiliated entity].]

#### **15.4 Final report — Request for payment of the balance**

In addition to the periodic report for the last reporting period, the coordinator must submit the final report within 90 days following the end of the last reporting period.

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

- (a) a **'final technical report'** containing:
- (i) an **overview of the activities** carried out and the **results** achieved.  
*This overview must also cover the impact indicators set out in Annex I;*
  - (ii) a **summary** for publication;
  - (iii) *not applicable;*
- (b) a **'final financial report'** containing a **'final summary financial statement'**, created automatically by the electronic exchange system, consolidating the individual financial statements for all reporting periods and including the **request for payment of the balance.**]

#### **15.5 Information on cumulative expenditure incurred**

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<sup>16</sup> See Article 207 RAP.



***[OPTION 1 for grants above EUR 5 million with reporting periods beyond 18 months<sup>17</sup>: In addition to the reporting requirements set out above, the coordinator must inform the [Commission][Agency] by [31 December][30 November] each year of the cumulative expenditure incurred by the beneficiaries from the starting date of the action.***

*This information is required for the Commission's accounting purposes and will not be used to calculate the final grant amount.]*

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

## **15.6 Currency for financial statements and conversion into euro**

Financial statements must be drafted in euro.

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

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

Beneficiaries *[and affiliated entities]* with accounting established in euro must convert costs incurred in another currency into euro according to their usual accounting practices.

## **15.7 Language of reports**

All report(s) (including financial statements) must be submitted in the language of the Agreement.

## **15.8 Consequences of non-compliance**

If the report(s) submitted do not comply with this Article, the Agency may suspend the payment deadline (see Article 31) and apply any of the other measures described in Chapter 6.

If the coordinator breaches its obligation to submit the report(s) and if it fails to comply with this obligation within 30 days following a written reminder, the Agency, may terminate the Agreement (see Article 34) or apply any of the other measures described in Chapter 6.

## **ARTICLE 16— PAYMENTS AND PAYMENT ARRANGEMENTS**

### **16.1 Payments to be made**

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<sup>17</sup> To be added in the case of grants of more than EUR 5 million for which a pre-financing is paid and the reporting periods for interim payments or payments of the balance exceed eighteen months.



The following payments will be made to the coordinator:

- a **pre-financing payment**;
- *[OPTION for actions with several RPs and interim payments: one or more interim payments, on the basis of the request(s) for interim payment (see Article 15), and]*
- one **payment of the balance**, on the basis of the request for payment of the balance (see Article 15).

## 16.2 Pre-financing payment — Amount [— *Pre-financing guarantee(s)*]

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

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

The amount of the pre-financing payment will be EUR **[insert amount (insert amount in words)<sup>18</sup>]**.

The Agency will — except if Article 32 applies — make the pre-financing payment to the coordinator within 30 days, either from the entry into force of the Agreement (see Article 42) or from 10 days before the starting date of the action (see Article 3) *[OPTION if Agency requires a pre-financing guarantee: or from receiving the pre-financing guarantee]*, whichever is the latest.

*[OPTION if the Agency requires one or more pre-financing guarantee(s)<sup>19</sup>: The payment of the pre-financing will be conditional on receiving a financial guarantee of EUR **[insert amount (insert amount in words)]**].*

*The guarantee(s) must fulfil the following conditions:*

- (a) be provided by a bank or an approved financial institution or — if requested by the coordinator and accepted by the Agency — by a third party;*
- (b) the guarantor stands as first-call guarantor and does not require the Agency (or the Commission) to first have recourse against the principal debtor (i.e. the beneficiary concerned), and*
- (c) remain explicitly in force until the payment of the balance and, if payment of the balance takes the form of recovery, until three months after the debit note is notified to a beneficiary.*

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<sup>18</sup> The pre-financing may not be more than 20 % of the maximum grant amount.

<sup>19</sup> A pre-financing guarantee may be required by the responsible authorising officer (RAO), if s/he considers it necessary (i.e. appropriate and proportionate), to limit the financial risks connected with the payment of pre-financing: Pre-financing guarantees may not be requested for low-value grants (see Article 134 of the Financial Regulation).

*The guarantee will be released within the following month.]*

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

### **16.3 Interim payments — Amount — Calculation**

*[OPTION 1 for actions with one RP and NO interim payments: Not applicable]*

*[OPTION 2 for actions with several RPs and interim payments: Interim payments reimburse the eligible costs incurred for the implementation of the action during the corresponding reporting periods.*

*The Agency will pay to the coordinator the amount due as interim payment within 60 days from receiving the periodic report (see Article 15.3), except if Articles 31 or 32 apply.*

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

*The amount due as interim payment is calculated by the Agency in the following steps:*

*Step 1 — Application of the reimbursement rates*

*Step 2 — Limit to 90% of the maximum grant amount*

#### **16.3.1 Step 1 — Application of the reimbursement rates**

*The reimbursement rate(s) (see Article 5.2) are applied to the eligible costs (actual costs[, unit costs] and flat-rate costs [and lump sum costs]; see Article 6) declared by the beneficiaries [and the affiliated entities] (see Article 15) and approved by the Agency (see above) for the concerned reporting period.*

#### **16.3.2 Step 2 — Limit to 90% of the maximum grant amount**

*The total amount of pre-financing and interim payments must not exceed 90% of the maximum grant amount set out in Article 5.1. The maximum amount for the interim payment will be calculated as follows:*

*{90% of the maximum grant amount (see Article 5.1)*

*minus*

*{pre-financing and previous interim payments}].]*

### **16.4 Payment of the balance — Amount — Calculation**

The payment of the balance reimburses the remaining part of the eligible costs incurred by the beneficiaries for the implementation of the action.

If the total amount of earlier payments is greater than the final grant amount (see Article 5.3), the payment of the balance takes the form of a recovery (see Article 28).

If the total amount of earlier payments is lower than the final grant amount, the Agency will pay the balance within 60 days from receiving the final report (see Article 15.4), except if Articles 31 or 32 apply.

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

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

$$\begin{array}{l} \{ \text{final grant amount (see Article 5.3)} \\ \text{minus} \\ \{ \text{pre-financing and interim payments (if any) made} \} \}. \end{array}$$

If the balance is positive, it will be paid to the coordinator.

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

If the balance is negative, it will be recovered from the coordinator (see Article 28).

### **16.5 Notification of amounts due**

When making payments, the Agency will formally notify to the coordinator the amount due, specifying that it concerns *[OPTION for actions with several RPs and interim payments: an interim payment or]* the payment of the balance.

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

In the case of reduction of the grant or recovery of undue amounts, the notification will be preceded by the contradictory procedure set out in Articles 27 and 28.

### **16.6 Currency for payments**

The Agency will make all payments in euro.

### **16.7 Payments to the coordinator — Distribution to the beneficiaries**

Payments will be made to the coordinator.

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

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

Pre-financing may however be distributed only:

- (a) if 90% of the beneficiaries have acceded to the Agreement (see Article 40) and
- (b) to beneficiaries that have acceded to the Agreement (see Article 40).

## 16.8 Bank account for payments

All payments will be made to the following bank account:

Name of bank: [...]

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

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

[IBAN code: [...]]<sup>20</sup>

## 16.9 Costs of payment transfers

The cost of the payment transfers is borne as follows:

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

## 16.10 Date of payment

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

## 16.11 Consequences of non-compliance

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

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<sup>20</sup> BIC or SWIFT code applies to for countries if the IBAN code does not apply.

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

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

Suspension of the payment deadline or payments (see Articles 31 and 32) will not be considered as late payment.

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

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

16.11.2 If the coordinator breaches any of its obligations under this Article, the grant may be reduced (see Article 27) and the Agreement or the participation of the coordinator may be terminated (see Article 34).

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

## **ARTICLE 17 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS**

### **17.1 Checks, reviews and audits by the Agency and the Commission**

#### **17.1.1 Right to carry out checks**

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

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

The Agency or the Commission may also request additional information in accordance with Article 12. The Agency or the Commission may request beneficiaries to provide such information to it directly.

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

#### **17.1.2 Right to carry out reviews**

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

Reviews may be started **up to [OPTION 1 by default: five][OPTION 2 for low value grants: three] years after the payment of the balance**. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the review is carried out on a third party (see Articles 9 to 11a), the beneficiary concerned must inform the third party.

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

The coordinator or beneficiary concerned must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources). The Agency or the Commission may request beneficiaries to provide such information to it directly.

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

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

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

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

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

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

### **17.1.3 Right to carry out audits**

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

Audits may be started **up to [OPTION 1 by default: five][OPTION 2 for low value grants: three] years after the payment of the balance**. They will be formally notified to the coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the audit is carried out on a third party (see Articles 9 to 11a), the beneficiary concerned must inform the third party.

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

The coordinator or beneficiary concerned must provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Agreement. The Agency or the Commission may request beneficiaries to provide such information to it directly.

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

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

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

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

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

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

The Agency or the Commission may also access the beneficiaries’ statutory records for the periodical assessment of *[unit costs or]* flat-rate amounts *[or lump sums]*.

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

Under Regulations No 883/2013<sup>21</sup> and No 2185/96<sup>22</sup> (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

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<sup>21</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18/09/2013, p. 1).

<sup>22</sup> Council Regulation (Euratom, EC) No 2185/1996 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15/11/1996, p. 2).



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

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/2012<sup>23</sup>, the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out audits.

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

### 17.4 Checks, reviews, audits and investigations for international organisations

Not applicable

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

#### 17.5.1 Findings in this grant

Findings in checks, reviews, audits or investigations carried out in the context of this grant may lead to the rejection of ineligible costs (see Article 26), reduction of the grant (see Article 27), recovery of undue amounts (see Article 28) or to any of the other measures described in Chapter 6.

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

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of Annex 1 (see Article 39).

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

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

#### 17.5.2 Findings in other grants

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

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

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<sup>23</sup> Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, EURATOM) No 1605/2002 (OJ L 298, 26/10/2012, p. 1).



- (b) those findings are formally notified to the beneficiary concerned — together with the list of grants affected by the findings — **no later than [OPTION 1 by default: five][OPTION 2 for low value grants: three] years after the payment of the balance of this grant.**

The extension of findings may lead to the rejection of costs (see Article 26), reduction of the grant (see Article 27), recovery of undue amounts (see Article 28), suspension of payments (see Article 32), suspension of the action implementation (see Article 33) or termination (see Article 34).

### 17.5.3 Procedure

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

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

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

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

The Agency or the Commission may then start a **rejection procedure** in accordance with Article 26, either on the basis of the revised financial statements, the alternative method or the correction rate announced.

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

- (a) an invitation to submit observations on the list of grants affected by the findings and
- (b) the flat-rate the Agency or the Commission intends to apply according to the principle of proportionality.

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

The Agency or the Commission may then start a **reduction procedure** in accordance with Article 27, either on the basis of the alternative flat-rate or the flat-rate announced.

### **17.6 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, any insufficiently substantiated costs will be ineligible (see Article 6) and will be rejected (see Article 26).

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

## **ARTICLE 18 — EVALUATION OF THE IMPACT OF THE ACTION**

### **18.1 Right to evaluate the impact of the action**

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

Evaluations may be started during implementation of the action and **up to [OPTION 1 by default: five][OPTION 2 for low value grants: three] years after the payment of the balance**. The evaluation is considered to start on the date of the formal notification to the coordinator or beneficiaries.

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

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

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

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

## **SECTION 3 OTHER RIGHTS AND OBLIGATIONS**

### **ARTICLE 18a — CONDITIONS FOR CARRYING OUT THE INFORMATION AND PROMOTION ACTIVITIES**

#### **18a.1 Obligations for carrying out the information and promotion activities**

The beneficiaries must respect the following conditions when carrying out their information and promotion activities:

- (a) ensure that the information and promotion measures are objective, unbiased and non-discriminatory;

(b) ensure that the information and promotion measures also promote the EU action (see Article 22);

(c) for **mentions of origin** of the promoted products:

- (i) ensure that the information and promotion measures are not origin-oriented;
  - ensure that the main message is EU-oriented (and not focused on a specific origin) and, in particular, that:
    - the mention of origin complements the main EU message;
    - the mention of origin does not encourage consumers to buy domestic goods solely because of their origin and the information on the particular properties of the product is also provided;
    - the mention of origin remains secondary (i.e. the text or symbol(s) referring to the origin is *[OPTION 1 for actions that concern information and promotion measures in EU Member States: less]**[OPTION 2 for actions that concern information and promotion measures in non-EU countries: not more]* prominent than text or symbol(s) referring to the main EU message);
    - the main EU message is not obscured by material related to the mention of origin (such as pictures, colours, symbols, etc.) and this material appears in a separate area;
- (ii) ensure that the mention of origin refers to national level or above (i.e. refers to a supra-national area or a Member State, but not below) — unless the mention of origin is part of:
  - an outermost regions logo ('RUP logo')<sup>24</sup> or related visual material;
  - a national quality scheme with an origin in its name;
  - an origin mentioned in the name of a product recognised under one of the following EU quality schemes:
    - protected designation of origin (PDO);
    - protected geographical indication (PGI) or

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<sup>24</sup> See Annex I to Commission Delegated Regulation (EU) No 179/2014 of 6 November 2013 supplementing Regulation (EU) No 228/2013 of the European Parliament and of the Council with regard to the register of operators, the amount of aid for the marketing of products outside the region, the logo, the exemption from import duties for certain bovine animals and the financing of certain measures relating to specific measures for agriculture in the outermost regions of the Union (OJ L 63, 4.3.2014, p. 3).

- traditional specialities guaranteed (TSG)<sup>25</sup>;
  - (iii) the mention of origin is limited to visual material (i.e. not audio);
  - (d) for use of **brands**:
    - (i) ensure that the information and promotion measures are not brand-oriented;
    - (ii) ensure that — except for information and promotion measures concerning national quality schemes registered as trade-mark — the use of brands:
      - is limited to:
        - demonstrations or tastings (at fairs, business-to-business events, on websites or in point of sales) and
        - printed information and promotional material distributed during such demonstrations and tastings;
- and
- complies with the following:
    - only brands that fall within the definition of trade marks under Articles 4 and 66 of Regulation No 207/2009<sup>26</sup> or Article 2 of Directive 2008/95/EC<sup>27</sup> are used;
    - the display of brands does not weaken the main EU message and, in particular:
      - the display of brands remains secondary (i.e. in a smaller format than the main EU message);
      - the main EU message is not obscured by the display of branded material (such as pictures, colours, symbols, etc.);
    - the brands are limited to visual display (i.e. not audio);

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<sup>25</sup> Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules (OJ L 179, 19.6.2014, p. 17).

<sup>26</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ L 78, 24.3.2009, p. 1).

<sup>27</sup> Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ L 299, 8.11.2008, p. 25).

- all members of the beneficiary organisation have been given an equal opportunity to display their brands and the brands are displayed together in an equally visible manner in an area separate from that devoted to the main EU message;
- the brands are displayed as follows:
  - for fairs, business-to-business events or point of sales, either:
    - all brands together in a banner on the front of the counter, with the banner not exceeding 5 % of the total surface area of the front of the counter (or proportionally less if less than 5 brands are mentioned)
  - or
  - the brands individually, in separate and identical booths in a neutral and identical way, on the front of the counter, with the display of the brand name not exceeding 5 % of the total surface area of the front of the counter (or proportionally less if less than 5 brands are mentioned);
- for websites: all brands together, either:
  - in a banner at the bottom of the webpage, with:
    - the banner not exceeding 5% of the total surface area of the webpage (or proportionally less if less than 5 brands are mentioned) and
    - each brand being smaller than the EU emblem (see Article 22);
  - or
  - on a dedicated webpage distinct from the home page, in a neutral and identical way for each brand;
- for printed information and promotional material distributed during demonstrations and tastings: all brands together in a banner at the bottom of the page, with the banner not exceeding 5 % of the total surface area of the page (or proportionally less if less than 5 brands are mentioned);

(e) for **health claims** (i.e. information on the impact of a product on health):

- (i) ensure that the health claim [*OPTION 1 for actions that concern information and promotion measures in EU Member States: complies with the Annex to Regulation No 1924/2006<sup>28</sup> or is approved by the national authority responsible for public health in the Member State where the operations are carried out*][*OPTION 2 for actions that concern information and promotion measures in non-EU countries: is approved by the national authority responsible for public health in the country where the operations are carried out.*][;][.]
  
- (f) [*OPTION 1 for actions that concern information and promotion measures in EU Member States: ensure that information and promotion measures concerning a national quality scheme focus on the scheme and not on individual products (i.e. individual products are only used to illustrate the scheme and appear as a secondary message, not weakening the main EU message).*]

## **18a.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 27).

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

## **ARTICLE 19 — PRE-EXISTING RIGHTS AND OWNERSHIP OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)**

### **19.1 Pre-existing rights and access rights to pre-existing rights**

Where industrial and intellectual property rights (including rights of third parties) exist prior to the Agreement, the beneficiaries must establish a list of these pre-existing industrial and intellectual property rights, specifying the owner and any persons that have a right of use.

The coordinator must — before starting the action — submit this list to the Agency.

Each beneficiary must give the other beneficiaries [*and their affiliated entities*] access to any pre-existing industrial and intellectual property rights needed for the implementation of the action and compliance with the obligations under the Agreement.

### **19.2 Ownership of results and rights of use**

The results of the action (including the reports and other documents relating to it) are owned by the beneficiaries.

The beneficiaries must give the Agency and the Commission the right to use the results for their communication activities under Article 22.

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<sup>28</sup> Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, 30.12.2006, p. 9).

### **19.3 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 27).

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

## **ARTICLE 20 — CONFLICT OF INTERESTS**

### **20.1 Obligation to avoid a conflict of interests**

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

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

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

### **20.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 27) and the Agreement or participation of the beneficiary may be terminated (see Article 34).

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

## **ARTICLE 21 — CONFIDENTIALITY**

### **21.1 General obligation to maintain confidentiality**

During implementation of the action and **for five years after the payment of the balance**, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed (**‘confidential information’**).

They may use confidential information to implement the Agreement.

The confidentiality obligations no longer apply if:

- (a) the disclosing party agrees to release the other party;
- (b) the information becomes generally and publicly available, without breaching any confidentiality obligation;

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

## **21.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 27).

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

## **ARTICLE 22 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING**

### **22.1 Communication activities by the beneficiaries**

#### **22.1.1 General obligation to promote the action and its results**

The beneficiaries must promote the action and its results.

#### **22.1.2 Information on EU funding — Obligation and right to use the EU emblem — Obligation and right to use the ‘Enjoy, it’s from Europe!’ signature**

22.1.2.1 All information and promotion material used must display the EU emblem and the following accompanying text, in the language(s) of the target market(s):



CAMPAIGN FINANCED WITH AID FROM THE EUROPEAN UNION

When displayed in association with other logos, the EU emblem must have appropriate prominence.

For visual media, the emblem and text must be clearly visible at the beginning, during or at the end of the message. For audio media, it must be clearly heard at the end of the message.

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

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

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

22.1.2.2 All visual information and promotion material used must bear the ‘Enjoy, it’s from Europe!’ signature:





which must be:

- in English, but it is possible to translate the text in a footnote;
- vertical;
- in colour (orange = 8-M74-Y90-K0) or in black and white (orange replaced with black K100 and blue with grey K60);
- in a size which is proportional to the size of the material on which it is placed.

Depending on the theme of the campaign, the signature may be accompanied by one of the following texts:

Theme	Text
Environment	The European Union supports campaigns that promote respect for the environment
Quality and food safety	The European Union supports campaigns that promote high quality agricultural products.
Health	The European Union supports campaigns that promote a healthy lifestyle.
Diversity	The European Union supports campaigns that promote a wide variety of agricultural products.
Tradition	The European Union supports campaigns that promote agricultural traditions.

The signature may not replace the EU emblem (or its accompanying text; see above).

### 22.1.3 Disclaimer excluding Agency and Commission responsibility

All visual information and promotion material used — except for small promotional items (e.g. small gadgets, such as pens) and small advertisements (e.g. web banners) — must indicate the following disclaimer:

“The content of this promotion campaign represents the views of the author only and is his/her sole responsibility. The European Commission and the Consumers, Health, Agriculture and Food Executive Agency (CHAFEA) do not accept any responsibility for any use that may be made of the information it contains.”

For websites, this disclaimer must be included in the legal notice. For social media accounts, it must be included in the account presentation section.

## 22.2 Communication activities by the Agency and the Commission

### 22.2.1 Right to use beneficiaries’ materials, documents or information

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

This does not change the confidentiality obligations in Article 21, which still apply.

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

- (a) **use for its own purposes** (in particular, making them available to persons working for the Agency, the Commission or any other EU institution, body, office or agency or body or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);
- (b) **distribution to the public** (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);
- (c) **editing or redrafting** for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);
- (d) **translation;**
- (e) giving **access in response to individual requests** under Regulation No 1049/2001<sup>29</sup>, without the right to reproduce or exploit;
- (f) **storage** in paper, electronic or other form;
- (g) **archiving**, in line with applicable document-management rules, and

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<sup>29</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31/5/2001, p. 43).

- (h) the right to authorise **third parties** to act on its behalf or sub-license the modes of use set out in Points (b), (c), (d) and (f) to third parties if needed for the communication and publicising activities of the Agency or the Commission.

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

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

“© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the Consumers, Health, Agriculture and Food Executive Agency (CHAFEA) and the European Union (EU) under conditions.”

### **22.3 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 27).

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

## **ARTICLE 23 — PROCESSING OF PERSONAL DATA**

### **23.1 Processing of personal data by the Agency and the Commission**

Any personal data under the Agreement will be processed by the Agency or the Commission under Regulation No 45/2001<sup>30</sup> and according to the ‘notifications of the processing operations’ to the Data Protection Officer (DPO) of the Agency or the Commission (publicly accessible in the DPO register).

Such data will be processed by the ‘**data controller**’ of the Agency or the Commission, for the purposes of implementing, managing and monitoring the Agreement or protecting the financial interests of the EU or Euratom (including checks, reviews, audits and investigations; see Article 17).

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

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

### **23.2 Processing of personal data by the beneficiaries**

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<sup>30</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12/01/2001, p 1)

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

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

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

### **23.3 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under Article 23.2, the Agency may apply any of the measures described in Chapter 6.

## **ARTICLE 24 — ASSIGNMENTS OF CLAIMS FOR PAYMENT AGAINST THE AGENCY**

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

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

In no circumstances will an assignment release the beneficiaries from their obligations towards the Agency.

## **CHAPTER 5 DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES**

### **ARTICLE 25 — DIVISION OF BENEFICIARIES' ROLES AND RESPONSIBILITIES**

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

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

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

The **financial responsibility** of each beneficiary is governed by Articles 28, 29 and 30.

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

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

(a) Each **beneficiary** must:

- (i) keep information stored in the Participant Portal Beneficiary Register (via the electronic exchange system) up to date (see Article 12);
- (ii) inform the coordinator immediately of any events or circumstances likely to affect significantly or delay the implementation of the action (see Article 12);
- (iii) submit to the coordinator in good time:
  - individual financial statement(s) for itself *[and its affiliated entities]* and, if required, certificates on the financial statement(s) (see Article 15);
  - the data needed to draw up the technical report(s) (see Article 15);
  - any other documents or information required by the Agency or the Commission under the Agreement, unless the Agreement requires the beneficiary to submit this information directly.

(b) The **coordinator** must:

- (i) monitor that the action is implemented properly (see Article 7);
- (ii) act as the intermediary for all communications between the beneficiaries and the Agency (in particular, providing the Agency with the information described in Article 12), unless the Agreement specifies otherwise;

- (iii) provide a pre-financing guarantee, if requested by the Agency (see Article 16.2);
- (iv) request and review any documents or information required by the Agency and verify their completeness and correctness before passing them on to the Agency;
- (v) submit the deliverables and report(s) to the Agency (see Articles 14 and 15);
- (vi) ensure that all payments are made to the other beneficiaries without unjustified delay (see Article 16).

The coordinator may not subcontract any of the above-mentioned tasks.

### **25.3 Internal arrangements between beneficiaries — Consortium agreement**

The beneficiaries must have internal arrangements regarding their operation and co-ordination to ensure that the action is implemented properly. These internal arrangements must be set out in a written '**consortium agreement**' between the beneficiaries, which may cover:

- internal organisation of the consortium;
- management of access to the electronic exchange system;
- distribution of EU funding;
- additional rules on rights and obligations related to pre-existing rights and results (see Article 19);
- settlement of internal disputes;
- liability, indemnification and confidentiality arrangements between the beneficiaries.

The consortium agreement must not contain any provision contrary to the Agreement.

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

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

**ARTICLE 26 — REJECTION OF INELIGIBLE COSTS**

**26.1 Conditions**

The Agency will — *[OPTION for actions with several RPs and interim payments: at the time of an interim payment,]* **at the payment of the balance or afterwards** — reject any costs which are ineligible (see Article 6), in particular following checks, reviews, audits or investigations (see Article 17).

The rejection may also be based on the **extension of findings from other grants to this grant** (see Article 17.5.2).

**26.2 Ineligible costs to be rejected — Calculation — Procedure**

Ineligible costs will be rejected in full *[OPTION if lump sum foreseen in Article 5.2:; except for lump sum costs, which will be rejected proportionally to the tasks or parts of the action not implemented]*.

If the rejection of costs does not lead to a recovery (see Article 28), the Agency will formally notify the coordinator or beneficiary concerned of the rejection of costs, the amounts and the reasons why (if applicable, together with the notification of amounts due; see Article 16.5). The coordinator or beneficiary concerned may — within 30 days of receiving notification — formally notify the Agency of its disagreement and the reasons why.

If the rejection of costs leads to a recovery, the Agency will follow the contradictory procedure with pre-information letter set out in Article 28.

**26.3 Effects**

If the Agency rejects costs at *[OPTION for actions with several RPs and interim payments: the time of an interim payment or]* **the payment of the balance**, it will deduct them from the total eligible costs declared, for the action, in the *[periodic or]* final summary financial statement (see Article 15.3 and 15.4). It will then calculate the *[interim payment or]* payment of the balance as set out in Article 16.3 or 16.4.

*[OPTION for actions with several RPs and interim payments: If the Agency — after an interim payment but before the payment of the balance — rejects costs declared in a periodic summary financial statement, it will deduct them from the costs declared in the next periodic summary financial statement or final summary financial statement. It will then calculate the interim payment or payment of the balance as set out in Article 16.3 or 16.4.]*

If the Agency rejects costs **after the payment of the balance**, it will deduct the amount rejected from the total eligible costs declared, by the beneficiary, in the final summary financial statement. It will then calculate the revised final grant amount as set out in Article 5.4. If the revised final grant amount is lower than the final grant amount, the Agency will recover the difference (see Article 28).

## **ARTICLE 27 — REDUCTION OF THE GRANT**

### **27.1 Conditions**

The Agency may — **at the payment of the balance or afterwards** — reduce the grant, if:

- (a) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed:
  - (i) substantial errors, irregularities or fraud or
  - (ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or
- (b) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 17.5.2).

### **27.2 Amount to be reduced — Calculation — Procedure**

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

Before reduction of the grant, the Agency will formally notify a ‘**pre-information letter**’ to the coordinator or beneficiary concerned:

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

If the Agency does not receive any observations or decides to pursue reduction despite the observations it has received, it will formally notify **confirmation** of the reduction (if applicable, together with the notification of amounts due; see Article 16).

### **27.3 Effects**



If the Agency reduces the grant at the time of **the payment of the balance**, it will calculate the reduced grant amount for the action and then determine the amount due as payment of the balance (see Articles 5.3.4 and 16.4).

If the Agency reduces the grant **after the payment of the balance**, it will calculate the revised final grant amount for the action or for the beneficiary concerned (see Article 5.4). If the revised final grant amount is lower than the final grant amount, the Agency will recover the difference (see Article 28).

## ARTICLE 28 — RECOVERY OF UNDUE AMOUNTS

### 28.1 Amount to be recovered — Calculation — Procedure

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

The coordinator is fully liable for repaying debts of the consortium (under the Agreement), even if it has not been the final recipient of those amounts.

*[OPTION 1 if Agency requires ‘unconditional joint and several liability’ of other beneficiaries: In addition, the beneficiaries (including the coordinator) are jointly and severally liable for repaying any unpaid debts under the Agreement (due by the consortium or any beneficiary, including late-payment interest) — up to the maximum grant amount set out in Article 5.1.] [OPTION 2 if Agency requires ‘limited joint and several liability’ of other beneficiaries (with individual ceilings): In addition, the beneficiaries (including the coordinator) are jointly and severally liable for repaying any unpaid debts under the Agreement (due by the consortium or any beneficiary, including late-payment interest) — up to the maximum EU contribution indicated, for each beneficiary, in the estimated budget (as last amended; see Annex 2).] [OPTION 3 if Agency accepts individual financial responsibility: The other beneficiaries’ financial responsibility in case of recovery is limited, for each beneficiary, to its own debts.]*

*[OPTION to be added if Article 11 applies: Undue amounts paid by the Agency for costs declared by an affiliated entity will be considered as amounts unduly paid to the beneficiary.]*

#### 28.1.1 Recovery at payment of the balance

If the payment of the balance takes the form of a recovery (see Article 16.4), the Agency will formally notify a ‘**pre-information letter**’ to the coordinator:

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

If no observations are submitted or the Agency decides to pursue recovery despite the observations it has received, it will **confirm** the amount to be recovered and formally notify to

the coordinator a **debit note** with the terms and the date for payment (together with the notification of amounts due; see Article 16.5).

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

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

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

- (b) *[OPTION 1 if Agency requires one or more pre-financing guarantee(s): by drawing on the financial guarantee(s) (see Article 16.2)]**[OPTION 2: not applicable]*;

- (c) *[OPTION 1 if Agency requires ‘unconditional joint and several liability’ of other beneficiaries: by holding the other beneficiaries jointly and severally liable — up to the maximum grant amount set out in Article 5.1]* *[OPTION 2 if Agency requires ‘limited joint and several liability’ of other beneficiaries (with individual ceilings): by holding the other beneficiaries jointly and severally liable — up to the maximum EU contribution indicated, for each beneficiary, in the estimated budget (as last amended; see Annex 2)]* *[OPTION 3 if Agency accepts individual financial responsibility: not applicable]*;

- (d) by **taking legal action** (see Article 41) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 16.11, from the day following the payment date in the debit note, up to and including the date the Agency or the Commission receives full payment of the amount.

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

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

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

If — after the payment of the balance — the Agency revised the final grant amount for the action or for the beneficiary concerned (see Article 5.4), due to a rejection of costs or reduction of the grant, and the revised final grant amount is lower than the final grant amount (see Article 5.3), the Agency will:

- if the rejection or reduction does *not* concern a specific beneficiary [*or its affiliated entities*]: claim back the difference from the coordinator (even if it has not been the final recipient of the amount in question)

or

- otherwise: claim back the difference from the beneficiary concerned.

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

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

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

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

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

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

- (b) **[OPTION 1 if Agency requires 'unconditional joint and several liability' of other beneficiaries: by holding the other beneficiaries jointly and severally liable — up to the maximum grant amount set out in Article 5.1] [OPTION 2 if Agency requires 'limited joint and several liability' of other beneficiaries (with individual ceilings): by holding the other beneficiaries jointly and severally liable, up to the maximum EU contribution indicated, for each beneficiary, in the estimated budget (as last amended; see Annex 2)] [OPTION 3 if Agency accepts individual financial responsibility: not applicable];**

- (c) by **taking legal action** (see Article 41) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial Regulation No 966/2012.

If payment is not made by the date in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 16.11, from the day following the date for payment in the debit note, up to and including the date the Agency or the Commission receives full payment of the amount.

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

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

## **ARTICLE 29 — ADMINISTRATIVE SANCTIONS**

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

## **SECTION 2 LIABILITY FOR DAMAGES**

### **ARTICLE 30 — LIABILITY FOR DAMAGES**

#### **30.1 Liability of the Agency**

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

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

#### **30.2 Liability of the beneficiaries**

Except in case of force majeure (see Article 35), the beneficiaries must compensate the Agency for any damage it sustains as a result of the implementation of the action or because the action was not implemented in full compliance with the Agreement.

## **SECTION 3 SUSPENSION AND TERMINATION**

### **ARTICLE 31 — SUSPENSION OF PAYMENT DEADLINE**

#### **31.1 Conditions**

The Agency may — at any moment — suspend the payment deadline (see Article 16.2 to 16.4), if a request for payment (see Article 15) cannot be approved because:

- (a) it does not comply with the provisions of the Agreement (see Article 15);
- (b) the technical or financial report(s) have not been submitted or are not complete or additional information is needed, or
- (c) there is doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.

## 31.2 Procedure

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

The suspension will **take effect** the day notification is sent by the Agency (see Article 36).

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

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

If the payment deadline has been suspended due to the non-compliance of the technical or financial report(s) (see Article 15) and the revised report or statement is not submitted or was submitted but is also rejected, the Agency may also terminate the Agreement or the participation of the beneficiary (see Article 34.3.1(i)).

## ARTICLE 32 — SUSPENSION OF PAYMENTS

### 32.1 Conditions

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

- (a) a beneficiary (or a natural person who has the power to represent or take decision on its behalf) has committed or is suspected of having committed:
  - (i) substantial errors, irregularities or fraud or
  - (ii) serious breach of obligations under this Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or
- (b) a beneficiary (or a natural person who has the power to represent or take decision on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 17.5.2).

If payments are suspended for one or more beneficiaries, the Agency will make partial payment(s) for the part(s) not suspended. If suspension concerns the payment of the balance, the payment (or recovery) of the amount(s) concerned after suspension is lifted will be considered to be the payment that closes the action.

### 32.2 Procedure

Before suspending payments, the Agency will formally notify the coordinator or beneficiary concerned:

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

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

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

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

*[OPTION for actions with several RPs and interim payments: During the suspension, the periodic report(s) for all reporting periods except the last one (see Article 15.3) must not contain any individual financial statement(s) from the beneficiary concerned [and its affiliated entities]. The coordinator must include them in the next periodic report after the suspension is lifted or — if suspension is not lifted before the end of the action — in the last periodic report.]*

The beneficiaries may suspend implementation of the action (see Article 33.1) or terminate the Agreement or the participation of the beneficiary concerned (see Article 34.1 and 34.2).

## **ARTICLE 33 — SUSPENSION OF THE ACTION IMPLEMENTATION**

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

#### **33.1.1 Conditions**

The beneficiaries may suspend implementation of the action or any part of it, if exceptional circumstances — in particular *force majeure* (see Article 35) — make implementation impossible or excessively difficult.

#### **33.1.2 Procedure**

The coordinator must immediately formally notify to the Agency the suspension (see Article 36), stating:

- the reasons why and
- the expected date of resumption.

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

Once circumstances allow for implementation to resume, the coordinator must immediately formally notify the Agency and request an **amendment** of the Agreement, to set the date on

which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 39) — unless the Agreement or the participation of a beneficiary has been terminated (see Article 34).

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

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

### **33.2 Suspension of the action implementation, by the Agency**

#### **33.2.1 Conditions**

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

- (a) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed or is suspected of having committed:
  - (i) substantial errors, irregularities or fraud or
  - (ii) serious breach of obligations under this Agreement or during the award procedure (including improper implementation of the action, submission of false declaration, failure to provide required information, breach of ethical principles) or
- (b) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 17.5.2).

#### **33.2.2 Procedure**

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

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

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

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

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



The coordinator or beneficiary concerned will be formally notified of the lifting and the Agreement will be **amended**, to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 39) — unless the Agreement has already been terminated (see Article 34).

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

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

The beneficiaries may not claim damages due to suspension by the Agency (see Article 30).

Suspension of the action implementation does not affect the Agency's right to terminate the Agreement or participation of a beneficiary (see Article 34), reduce the grant or recover amounts unduly paid (see Articles 27 and 28).

## **ARTICLE 34 — TERMINATION OF THE AGREEMENT OR OF THE PARTICIPATION OF ONE OR MORE BENEFICIARIES**

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

#### **34.1.1 Conditions and procedure**

The beneficiaries may terminate the Agreement.

The coordinator must formally notify termination to the Agency (see Article 36), stating:

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

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

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

#### **34.1.2 Effects**

The coordinator must — within 90 days from when termination takes effect — submit *[OPTION for actions with several RPs and interim payments: a periodic report (for the open reporting period until termination; see Article 15.3) and]* the final report (see Article 15.4).

If the Agency does not receive the report(s) within the deadline (see above), *[OPTION 1 for actions with one RP and NO interim payments: no costs will be taken into account]* *[OPTION 2 for actions with several RPs and interim payments: only costs which are included in an approved periodic report will be taken into account]*.



The Agency will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 16.4) on the basis of the report(s) submitted. Only costs incurred until termination are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

Improper termination may lead to a reduction of the grant (see Article 27).

After termination, the beneficiaries' obligations (in particular, Articles 15, 17, 18, 19, 21, 22, 24, 26, 27 and 28) continue to apply.

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

### **34.2.1 Conditions and procedure**

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

The coordinator must formally notify termination to the Agency (see Article 36) and inform the beneficiary concerned.

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

The notification must include:

- the reasons why;
- the opinion of the beneficiary concerned (or proof that this opinion has been requested in writing);
- the date the termination takes effect. This date must be after the notification, and
- a request for amendment (see Article 39), with a proposal for reallocation of the tasks and the estimated budget of the beneficiary concerned (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 40). If termination takes effect after the period set out in Article 3, no request for amendment must be included, unless the beneficiary concerned is the coordinator. In this case, the request for amendment must propose a new coordinator.

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

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

### **34.2.2 Effects**

The beneficiary concerned must submit to the coordinator:

- (i) a technical report and

- (ii) a financial statement covering the period [*OPTION for actions with several RPs and interim payments: from the end of the last reporting period*] to the date when termination takes effect.

This information must be included by the coordinator in the [*OPTION 1 for actions with one RP and no interim payments: final report (see Article 15.4)*][*OPTION 2 for actions with several RPs and interim payments: periodic report for the next reporting period (see Article 15.3)*].

If the request for amendment is rejected by the Agency (because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the Agreement may be terminated according to Article 34.3.1(c).

If the request for amendment is accepted by the Agency, the Agreement is **amended** to introduce the necessary changes (see Article 39).

Improper termination may lead to a reduction of the grant (see Article 27) or termination of the Agreement (see Article 34).

After termination, the concerned beneficiary's obligations (in particular Articles 15, 17, 18, 19, 21, 22, 24, 26, 27 and 28) continue to apply.

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

#### **34.3.1 Conditions**

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

- (a) one or more beneficiaries do not accede to the Agreement (see Article 40);
- (b) a change to their legal, financial, technical, organisational or ownership situation [*(or those of its affiliated entities)*] is likely to substantially affect or delay the implementation of the action or calls into question the decision to award the grant;
- (c) following termination of participation for one or more beneficiaries (see above), the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants (see Article 39);
- (d) implementation of the action is prevented by force majeure (see Article 35) or suspended by the coordinator (see Article 33.1) and either:
  - (i) resumption is impossible, or
  - (ii) the necessary changes to the Agreement would call into question the decision awarding the grant or breach the principle of equal treatment of applicants;

- (e) a beneficiary is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures under national law;
- (f) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has been found guilty of professional misconduct, proven by any means;
- (g) a beneficiary does not comply with the applicable national law on taxes and social security;
- (h) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity;
- (i) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed:
  - (i) substantial errors, irregularities or fraud or
  - (ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles);
- (j) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 17.5.2);
- (k) not applicable.

### 34.3.2 Procedure

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

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

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

The termination will **take effect**:

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

### 34.3.3 Effects

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

The coordinator must — within 90 days from when termination takes effect — submit *[OPTION for actions with several RPs and interim payments: a periodic report (for the last open reporting period until termination; see Article 15.3) and]* a final report (see Article 15.4).

If the Agreement is terminated for breach of the obligation to submit report(s) (see Articles 15.8 and 34.3.1(i)), the coordinator may not submit any report(s) after termination.

If the Agency does not receive the reports within the deadline (see above), *[OPTION 1 for actions with one RP and NO interim payments: no costs will be taken into account] [OPTION 2 for actions with several RPs and interim payments: only costs which are included in an approved periodic report will be taken into account]*.

The Agency will **calculate** the final grant amount (see Article 5.3) and the balance (see Article 16.4) on the basis of the report(s) submitted. Only costs incurred until termination takes effect are eligible (see Article 6). Costs relating to contracts due for execution only after termination are not eligible.

This does not affect the Agency's right to reduce the grant (see Article 27) or to impose administrative sanctions (Article 29).

The beneficiaries may not claim damages due to termination by the Agency (see Article 30).

After termination, the beneficiaries' obligations (in particular Articles 15, 17, 18, 19, 21, 22, 24, 26, 27 and 28) continue to apply.

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

The coordinator must — within 60 days from when termination takes effect — submit a request for amendment (see Article 39), with a proposal for reallocation of the tasks and estimated budget of the beneficiary concerned (see Annexes 1 and 2) and, if necessary, the addition of one or more new beneficiaries (see Article 40). If termination is notified after the period set out in Article 3, no request for amendment must be submitted unless the beneficiary concerned is the coordinator. In this case the request for amendment must propose a new coordinator.

The beneficiary concerned must submit to the coordinator:

- (i) a technical report and
- (ii) a financial statement covering the period [*OPTION for actions with several RPs and interim payments: from the end of the last reporting period*] to the date when termination takes effect.

This information must be included by the coordinator in the [*OPTION 1 for actions with one RP and no interim payments: final report (see Article 15.4)*][*OPTION 2 for actions with several RPs and interim payments: periodic report for the next reporting period (see Article 15.3)*].

If the request for amendment is rejected by the Agency (because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the Agreement may be terminated according to Article 34.3.1(c).

If the request for amendment is accepted by the Agency, the Agreement is **amended** to introduce the necessary changes (see Article 39).

After termination, the concerned beneficiary's obligations (in particular Articles 15, 17, 18, 19, 20, 21, 22, 24, 26, 27 and 28) continue to apply.

## **SECTION 4 FORCE MAJEURE**

### **ARTICLE 35 — FORCE MAJEURE**

'Force majeure' means any situation or event that:

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

The following cannot be invoked as force majeure:

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

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

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

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

## **CHAPTER 7 FINAL PROVISIONS**

### **ARTICLE 36 — COMMUNICATION BETWEEN THE PARTIES**

#### **36.1 Form and means of communication**

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

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

**Until the payment of the balance:** all communication must be made through the electronic exchange system and using the forms and templates provided there.

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

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

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

#### **36.2 Date of communication**

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

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

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

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

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

#### **36.3 Addresses for communication**

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

[insert URL]

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

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

Consumers, Health, Agriculture and Food Executive Agency (CHAFEA)  
Drosbach Building  
L-2920 Luxembourg  
LUXEMBOURG

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

## **ARTICLE 37 — INTERPRETATION OF THE AGREEMENT**

### **37.1 Precedence of the Terms and Conditions over the Annexes**

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

Annex 2 takes precedence over Annex 1.

### **37.2 Privileges and immunities**

Not applicable

## **ARTICLE 38 — CALCULATION OF PERIODS, DATES AND DEADLINES**

In accordance with Regulation No 1182/71<sup>31</sup>, periods expressed in days, months or years are calculated from the moment the triggering event occurs.

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

## **ARTICLE 39 — AMENDMENTS TO THE AGREEMENT**

### **39.1 Conditions**

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<sup>31</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ L 124, 8/6/1971, p. 1).



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

Amendments may be requested by any of the parties.

## **39.2 Procedure**

The party requesting an amendment must submit a request for amendment signed in the electronic exchange system (see Article 36).

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

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

The request for amendment must include:

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

The Agency may request additional information.

If the party receiving the request agrees, it must sign the amendment in the electronic exchange system within 45 days of receiving notification (or any additional information the Agency has requested). If it does not agree, it must formally notify its disagreement within the same deadline. The deadline may be extended, if necessary for the assessment of the request. If no notification is received within the deadline, the request is considered to have been rejected.

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

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

## **ARTICLE 40 — ACCESSION TO THE AGREEMENT**

### **40.1 Accession of the beneficiaries mentioned in the preamble**

The other beneficiaries must accede to the Agreement by signing the Accession Form (see Annex 3) in the electronic exchange system (see Article 36), within 30 days after its entry into force (see Article 42).

They will assume the rights and obligations under the Agreement with effect from the date of its entry into force (see Article 42).

If a beneficiary does not accede to the Agreement within the above deadline, the coordinator must — within 30 days — request an amendment to make any changes necessary to ensure proper implementation of the action. This does not affect the Agency's right to terminate the Agreement (see Article 34).

## 40.2 Addition of new beneficiaries

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

For this purpose, the coordinator must submit a request for amendment in accordance with Article 39. It must include an Accession Form (see Annex 3) signed by the new beneficiary in the electronic exchange system (see Article 36).

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

## ARTICLE 41 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES

### 41.1 Applicable law

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

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

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

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

### 41.2 Dispute settlement

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

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

*[additional OPTION for are international organisations and for non-EU beneficiaries not receiving EU funding which according to their national law cannot be subject to the jurisdiction of the Belgian courts: As an exception, for the following beneficiaries:*

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

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

If a dispute concerns administrative sanctions, offsetting or an enforceable decision under Article 79(2) of the Financial Regulation No 966/2012 and Article 299 TFEU (see Articles 28, 29 and 30), the beneficiaries must bring action before the General Court — or, on appeal, the Court of Justice of the European Union — under Article 263 TFEU. Actions against enforceable decisions must be brought against the Commission (not against the Agency).

## **ARTICLE 42 — ENTRY INTO FORCE OF THE AGREEMENT**

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

### **SIGNATURES**

For the coordinator

[function/forename/surname]  
[electronic signature]

Done in [English] on [electronic time stamp]

For the Agency

[forename/surname]  
[electronic signature]

Done in [English] on [electronic time stamp]

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## **ANNEX 1**

### **DESCRIPTION OF THE ACTION**

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MODEL ANNEX 2 CHAFEA AGRICULTURE PROMOTION MGA — MULTI

ESTIMATED BUDGET FOR THE ACTION

	Estimated eligible <sup>1</sup> costs (per budget category)				Total costs	EU contribution		
	A. Direct personnel costs	B. Direct costs of subcontracting	C. Other direct costs	D. Indirect costs <sup>2</sup>		Reimbursement rate % <sup>3</sup>	Maximum EU contribution <sup>4</sup>	Maximum grant amount <sup>5</sup>
	A.1 Employees (or equivalent) A.2 Natural persons under direct contract and seconded persons		C.1 Travel C.2 Equipment C.3 Other goods and services					
Cost form <sup>7</sup>	Actual	Actual	Actual	Flat-rate <sup>8</sup> 4%				
	a	b	c	d = 0,04 * a	e = a + b + c + d	f	g = f * e	h
[short name beneficiary 1]								
[short name affiliated entity 1a]								
[short name beneficiary 2]								
<b>Total consortium</b>								

  

Action's estimated receipts		
Income generated by the action	Financial contributions given to the beneficiaries by their members <sup>6</sup>	Action's total receipts
i	j	k = i+j

<sup>1</sup> See Article 6 for the eligibility conditions

<sup>2</sup> The indirect costs claimed must be free of any amounts covered by an operating grant (received under any EU or Euratom funding programme). A beneficiary that receives an operating grant during the action's duration cannot claim any indirect costs for the year(s)/reporting period(s) covered by the operating grant (see Article 6.2.D.)

<sup>3</sup> See Article 5.2 for the reimbursement rate(s).

<sup>4</sup> This is the theoretical amount of the EU contribution calculated by the system automatically i.e. the total costs by beneficiary multiplied by the reimbursement rate (see Article 5.2). The sum of these theoretical amounts is capped by the 'maximum grant amount'.

<sup>5</sup> The 'maximum grant amount' is the maximum grant amount decided by the Agency. It normally corresponds to the requested grant, but may be lower .

<sup>6</sup> For CHAFEA AGRICULTURE PROMOTION grants only financial contributions given to the beneficiaries by their members are allowed. Financial contributions given by third parties other than members are NOT allowed.

<sup>7</sup> See Article 5.2 for the cost forms.

<sup>8</sup> Flat rate : 4% of eligible direct personnel costs (see Article 6.2.D).

## ANNEX 3

### ACCESSION FORM FOR BENEFICIARIES

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

hereby agrees

to become [*beneficiary*][*coordinator*] No [insert beneficiary No]

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

between [full official name of the coordinator] and the Consumers, Health, Agriculture and Food Executive Agency (CHAFEA) ('the Agency'), under the power delegated by the European Commission ('the Commission')

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

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

*the coordinator to submit and sign in its name and on its behalf any amendments to the Agreement, in accordance with Article 39.]*

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

#### SIGNATURE

For the beneficiary/new beneficiary/new coordinator

[function/forename/surname]

[electronic signature]

Done in [English] on [electronic time stamp]

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

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MODEL ANNEX 4 CHAFEA AGRICULTURE PROMOTION MGA — MULTI

FINANCIAL STATEMENT FOR [BENEFICIARY] [AFFILIATED ENTITY] [name] FOR REPORTING PERIOD [reporting period]

	Eligible <sup>1</sup> costs (per budget category)				Receipts			EU contribution			
	A. Direct personnel costs	B. Direct costs of subcontracting	C. Other direct costs	D. Indirect costs <sup>2</sup>	Total costs	Income generated by the action	Financial contributions given to the beneficiaries by their members <sup>3</sup>	Total receipts	Reimbursement rate % <sup>4</sup>	Maximum EU contribution <sup>5</sup>	Requested EU contribution <sup>6</sup>
	A.1 Employees (or equivalent) A.2 Natural persons under direct contract and seconded persons		C.1 Travel C.2 Equipment C.3 Other goods and services								
Cost form <sup>7</sup>	Actual	Actual	Actual	Flat-rate <sup>8</sup> 4%							
	a	b	c	d = 0,04 * a	e = a + b + c + d	f	g	h = f + g	i	j	k
[short name beneficiary/affiliated entity]											

The beneficiary/affiliated entity hereby confirms that:

The information provided is complete, reliable and true.

The costs declared are eligible (see Article 6).

The costs can be substantiated by adequate records and supporting documentation that will be produced upon request or in the context of checks, reviews, audits and investigations (see Articles 12, 13 and 17).

For the last reporting period: that all the receipts have been declared (see Article 5.3.3).

① Please declare ALL eligible costs, even if they exceed the amounts indicated in the estimated budget (see Annex 2). Only amounts that were declared in your individual financial statements can be later on taken into account, if other costs turn out to be ineligible.

<sup>1</sup> See Article 6 for the eligibility conditions.

<sup>2</sup> The indirect costs claimed must be free of any amounts covered by an operating grant (received under any EU or Euratom funding programme). A beneficiary that receives an operating grant during the duration of the action cannot claim any indirect costs for the year(s) covered by the operating grant (see Article 6.2.D).

<sup>3</sup> For CHAFEA AGRICULTURE PROMOTION grants only financial contributions by the beneficiary's members are allowed. Financial contributions given by third parties other than members are NOT allowed.

<sup>4</sup> See Article 5.2 for the reimbursement rate(s).

<sup>5</sup> This is the theoretical amount of EU contribution that the system calculates automatically (by multiplying the reimbursement rate by the total costs declared).

<sup>6</sup> You may request up to the amount of 'maximum EU contribution', however it may have to be less.

<sup>7</sup> See Article 5 for the cost forms.

<sup>8</sup> Flat rate : 4% of eligible direct personnel costs (see Article 6.2.D).

## ANNEX 5

### MODEL FOR THE CERTIFICATE ON THE FINANCIAL STATEMENT (CFS)

This document sets out:

- the objectives and scope of the independent report of factual findings on costs declared under a EU grant agreement financed under the Promotion of Agricultural Products Programme and
- a model for the certificate on the financial statement (CFS).

#### 1. Background and subject matter

**[OPTION 1 for actions with one RP and NO interim payments:** Within 90 days after the end of the reporting period, the coordinator must submit to the Agency a **final report**, which should include (among other documents and unless otherwise specified in Article 15 of the Grant Agreement) a **certified financial statement** (CFS; see proposed model below) for each beneficiary, if:

- it requests an EU contribution of EUR 325 000 or more as reimbursement of actual costs and
- the maximum EU contribution indicated for that beneficiary in the estimated budget (see Annex 2) as reimbursement of actual costs is EUR 750 000 or more.]

**[OPTION 2 for actions with several RPs and interim payments:** Within 60 days after the end of each reporting period, the coordinator must submit to the Agency a **periodic report**, which should include (among other documents and unless otherwise specified in Article 15 of the Grant Agreement) a **certified financial statement** (CFS; see proposed model below) for each beneficiary, if:

- the cumulative amount of EU contribution the beneficiary requests as reimbursement of actual costs is EUR 325 000 or more and
- the maximum EU contribution indicated for that beneficiary in the estimated budget (see Annex 2) as reimbursement of actual costs is EUR 750 000 or more.

The CFS must be submitted every time the cumulative amount of payments requested (i.e. including in previous financial statements) reaches the threshold (i.e. a first certificate once the cumulative amount reaches 325 000, a second certificate once it reaches 650 000, a third certificate once it reaches 975 000, etc.).

Once the threshold is reached, the CFS must cover all reporting periods for which no certificate has yet been submitted.]



The beneficiary must provide the CFS for itself.

The **purpose** of the audit on which the CFS is based is to give the Agency ‘reasonable assurance’<sup>1</sup> that costs declared as eligible costs under the grant (and, if relevant, receipts generated in the course of the action) are being claimed by the beneficiary in accordance with the relevant legal and financial provisions of the Grant Agreement.

The **scope** of the audit is limited to the verification of eligible costs included in the CFS. The audit must be conducted in line with point 3 below.

Certifying auditors must carry out the audits in compliance with generally accepted **audit standards** and indicate which standards they have applied. They must bear in mind that, to establish a CFS, they must carry out a compliance audit and not a normal statutory audit. The eligibility criteria in the Grant Agreement always override normal accounting practices.

The beneficiary and the auditor are expected to address any **questions on factual data or detailed calculations** before the financial statement and the accompanying certificate are submitted. It is also recommended that the beneficiary take into account the auditor’s preliminary comments and suggestions in order to avoid a qualified opinion or reduce the scope of the qualifications.

Since the certificate is the main source of assurance for cost claims and payments, it will be easier to consider amounts as eligible if a **non-qualified certificate** is provided.

The submission of a certificate does not affect the Agency’s right to carry out its **own assessment or audits**. Neither does the reimbursement of costs covered by a certificate preclude the Agency or the Commission, the European Anti-Fraud Office or the European Court of Auditors from carrying out checks, reviews, audits and investigations in accordance with Article 17 of the Grant Agreement.

The Agency expects the certificates to be issued by auditors according to the highest professional standards.

## 2. Auditors who may deliver a certificate

The beneficiary is free to choose a **qualified external auditor**, including its usual external auditor, provided that:

- the external auditor is **independent** from the beneficiary and
- the provisions of **Directive 2006/43/EC**<sup>2</sup> are complied with.

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<sup>1</sup> This means a high degree of confidence.

<sup>2</sup> Directive [2006/43/EC](#) of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts or similar national regulations (OJ L 157, 9.6.2006, p. 87).

Independence is one of the qualities that permit the auditor to apply unbiased judgement and objective consideration to established facts to arrive at an opinion or a decision. It also means that the auditor works without direction or interference of any kind from the beneficiary.

Auditors are considered as providing services to the beneficiary under a **purchase contract** within the meaning of Article 9 of the Grant Agreement. This means that the costs of the CFS may normally be declared as costs incurred for the action, if the cost eligibility rules set out in Articles 6 and 9.1.1 of the Grant Agreement are fulfilled (especially: best value for money and no conflict of interests; see also below eligibility of costs of other goods and services). Where the beneficiary uses its usual external auditor, it is presumed that they already have an agreement that complies with these provisions and there is no obligation to find new bids. Where the beneficiary uses an external auditor who is not their usual external auditor, it must select an auditor following the rules set out in Article 9.1.1.

**Public bodies** can choose an external auditor or a competent public officer. In the latter case, the auditor's independence is usually defined as independence from the audited beneficiary 'in fact and in appearance'. A preliminary condition is that this officer was not involved in any way in drawing up the financial statements. Relevant national authorities establish the legal capacity of the officer to carry out audits of that specific public body. The certificate should refer to this appointment.

### 3. Audit methodology and expected results

#### 3.1 Verification of eligibility of the costs declared

The auditor must conduct its verification on the basis of inquiry and analysis, (re)computation, comparison, other accuracy checks, observation, inspection of records and documents and by interviewing the beneficiary (and the persons working for it).

The auditor must examine the following documentation:

- the Grant Agreement and any amendments to it;
- the periodical and/or final report(s);
- *for personnel costs*
  - salary slips;
  - time sheets;
  - contracts of employment;
  - other documents (e.g. personnel accounts, social security legislation, invoices, receipts, etc.);
  - proofs of payment;
- *for subcontracting*
  - the call for tender;
  - tenders (if applicable);
  - justification for the choice of subcontractor;
  - contracts with subcontractors;
  - invoices;
  - declarations by the beneficiary;
  - proofs of payment;
  - other documents: e.g. national rules on public tendering if applicable, EU Directives, etc.;

- *for travel and subsistence costs*
  - the beneficiary's internal rules on travel;
  - transport invoices and tickets (if applicable);
  - declarations by the beneficiary;
  - other documents (proofs of attendance such as minutes of meetings, reports, etc.);
  - proofs of payment;
- *for equipment costs*
  - invoices;
  - delivery slips / certificates of first use;
  - proofs of payment;
  - depreciation method of calculation;
- *for costs of other goods and services*
  - invoices;
  - proofs of payment; and
  - other relevant accounting documents.

### ***General eligibility rules***

The auditor must verify that the costs declared comply with the general eligibility rules set out in Article 6.1 of the Grant Agreement.

In particular, the costs must:

- be actually incurred;
- be linked to the subject of the Grant Agreement and indicated in the beneficiary's estimated budget (i.e. the latest version of Annex 2);
- be necessary to implement the action which is the subject of the grant;
- be reasonable and justified, and comply with the requirements of sound financial management, in particular as regards economy and efficiency;<sup>3</sup>
- have been incurred during the action, as defined in Article 3 of the Grant Agreement (with the exception of the invoice for the audit certificate and costs relating to the submission of the final report);
- not be covered by another EU or Euratom grant (see below ineligible costs);
- be identifiable, verifiable and, in particular, recorded in the beneficiary's accounting records and determined according to the applicable accounting standards of the country where it is established and its usual cost-accounting practices;
- comply with the requirements of applicable national laws on taxes, labour and social security;
- be in accordance with the provisions of the Grant Agreement (see, in particular, Articles 6 and 9-11a) and
- have been converted to euro at the rate laid down in Article 15.6 of the Grant Agreement:
  - for beneficiaries with accounts established in a currency other than the euro:

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<sup>3</sup> To be assessed in particular on the basis of the procurement and selection procedures for service providers.

Costs incurred in another currency must be converted into euros at the average of the daily exchange rates published in the C series of the [EU Official Journal](#) determined over the corresponding reporting period.

If no daily euro exchange rate is published in the EU Official Journal for the currency in question, the rate used must be the average of the monthly accounting rate established by the Commission and published on its [website](#);

- for beneficiaries with accounts established in euro:  
Costs incurred in another currency should be converted into euros applying the beneficiary's usual accounting practice.

The auditor must verify whether expenditure includes **VAT** and, if so, verify that the beneficiary:

- cannot recover the VAT (this must be supported by a statement from the competent body) and
- is not a public body acting as a public authority.

The auditor should base his/her audit approach on the **confidence level** following a review of the beneficiary's internal control system. When using sampling, the auditor should indicate and justify the sampling size.

### *Specific eligibility rules*

In addition, the auditor must verify that the costs declared comply with the specific cost eligibility rules set out in Article 6.2 and Articles 9.1.1, 10.1.1, 11.1.1, 11a.1.1 and 11a.2.1 of the Grant Agreement.

### *Personnel costs*

The auditor must verify that:

- personnel costs have been charged and paid in respect of the actual time devoted by the beneficiary's personnel to implementing the action (justified on the basis of time sheets or other relevant time-recording system);
- personnel costs were calculated on the basis of annual gross salary, wages or fees (plus obligatory social charges, but excluding any other costs) specified in an employment or other type of contract, not exceeding the average rates corresponding to the beneficiary's usual policy on remuneration;
- the work was carried out during the period of implementation of the action, as defined in Article 3 the Grant Agreement and
- the personnel costs are not covered by another EU or Euratom grant (see below ineligible costs);
- for additional remunerations: the 2 conditions set out in Article 6.2.A.1 are met (i.e. that it is part of the beneficiary's usual remuneration practices and is paid in a consistent manner whenever the same kind of work or expertise is required and that the criteria used to calculate the supplementary payments are objective and generally applied by the beneficiary, regardless of the source of funding used);
- for in-house consultants: the 3 conditions set out in Article 6.2.A.2 of the Grant Agreement are met (i.e. that the in-house consultant works under the beneficiary's instructions, that the result of the work carried out belongs to the beneficiary, and that

the costs are not significantly different from those for personnel performing similar tasks under an employment contract).

The auditor should have assurance that the management and accounting system ensures proper allocation of the personnel costs to various activities carried out by the beneficiary and funded by various donors.

#### *Subcontracting costs*

The auditor must verify that:

- the subcontracting complies with best value for money (or lowest price) and that there was no conflict of interests;
- subcontracting was necessary to implement the action for which the grant is requested;
- subcontracting was provided for in Annex 1 and Annex 2 or agreed to by the Agency at a later stage;
- the subcontracting is supported by accounting documents in accordance with national accounting law;
- the costs for subcontracts with entities that have a structural link with the beneficiary are limited to the own costs of the entity (i.e. without any profit margin; see Article 10 of the Grant Agreement);
- public bodies have complied with the national rules on public procurement.

#### *Travel and subsistence costs*

The auditor must verify that travel and subsistence costs:

- have been charged and paid in accordance with the beneficiary's internal rules or usual practices;
- are not covered by another EU or Euratom grant (see below ineligible costs);
- were incurred for travels linked to action tasks set out in Annex 1 of the Grant Agreement.

#### *Equipment costs*

The auditor must verify that:

- the equipment is purchased, rented or leased at normal market prices;
- public bodies have complied with the national rules on public procurement;
- the equipment is written off, depreciation has been calculated according to the tax and accounting rules applicable to the beneficiary and only the portion of the depreciation corresponding to the duration of the action has been declared and
- the costs are not covered by another EU or Euratom grant (see below ineligible costs).

#### *Costs of other goods and services*

The auditor must verify that:

- the purchase complies with best value for money (or lowest price) and that there was no conflict of interests;
- public bodies have complied with the national rules on public procurement;
- the costs are not covered by another EU or Euratom grant (see below ineligible costs).

### ***Ineligible costs***

The auditor must verify that the beneficiary has not declared any costs that are ineligible under Article 6.4 of the Grant Agreement:

- costs relating to return on capital;
- debt and debt service charges;
- provisions for future losses or debts;
- interest owed;
- doubtful debts;
- currency exchange losses;
- bank costs charged by the beneficiary's bank for transfers from the Agency;
- excessive or reckless expenditure;
- deductible VAT;
- VAT incurred by a public body acting as a public authority;
- costs incurred during suspension of the implementation of the action;
- in-kind contributions from third parties;
- costs declared under other EU or Euratom grants (including those awarded by a Member State and financed by the EU or Euratom budget or awarded by bodies other than the Agency for the purpose of implementing the EU or Euratom budget); in particular, indirect costs if the beneficiary is already receiving an operating grant financed by the EU or Euratom budget in the same period;
- costs incurred for permanent staff of a national administration for activities that are part of its normal activities (i.e. not undertaken only because of the grant);
- costs incurred for staff or representatives of EU institutions, bodies or agencies.

### ***3.2 Verification of receipts***

The auditor must verify that the beneficiary has declared receipts within the meaning of Article 5.3.3 of the Grant Agreement, i.e.:

- income generated by the action (e.g. from the sale of products, services and publications, conference fees)
- financial contributions given to the beneficiary organisation by its members, specifically to be used for costs that are eligible under the action.

Moreover, the auditor must verify that the remaining costs of the action were borne by beneficiary, i.e. that there were no financial contributions given by third parties specifically to be used for costs that are eligible under the action (except by members) (see Article 5.2 and 5.3.3 of the Grant Agreement).

### ***3.3 Verification of the beneficiary's accounting system***

The auditor must verify that:

- the accounting system (analytical or other suitable internal system) makes it possible to identify **sources of financing** for the action and related expenses incurred during the contractual period and
- expenses/income under the grant have been recorded systematically using a numbering system that **distinguishes** them from expenses/income for other projects.

## Certificate on the financial statement (CFS)

To

[Beneficiary's full name  
address]

We, [full name of the audit firm/organisation], established in [full address/city/country], represented for signature of this audit certificate by [name and function of an authorised representative],

**hereby certify**

that:

1. We have **conducted an audit** relating to the costs declared in the financial statement of [name of beneficiary] (the 'beneficiary'), to which this audit certificate is attached and which is to be presented to the Consumers, Health, Agriculture and Food Executive Agency under Grant Agreement No [insert number] — [insert acronym], covering costs for the following reporting period(s): [insert reporting period(s)].
2. We confirm that our audit was **carried out in accordance with generally accepted auditing standards** in compliance with ethical rules and on the basis of the provisions of the **Grant Agreement** and its Annexes (and in particular the audit methodology described in Annex 5).
3. The financial statement was examined and all necessary tests of [all/[X]%/] of the supporting documentation and accounting records were carried out in order to obtain **reasonable assurance that**, in our opinion and on the basis of our audit
  - total **costs** of **EUR [insert number]** ([insert amount in words]) are eligible, i.e.:
    - actual;
    - determined in accordance with the beneficiary's accounting principles;
    - incurred during the period referred to in Article 3 of the Grant Agreement;
    - recorded in the beneficiary's accounts (at the date of this audit certificate);
    - comply with the specific eligibility rules in Article 6.2 of the Grant Agreement;
    - do not contain costs that are ineligible under Article 6.4 of the Grant Agreement, in particular:
      - costs relating to return on capital;
      - debt and debt service charges;
      - provisions for future losses or debts;
      - interest owed;
      - doubtful debts;
      - currency exchange losses;
      - bank costs charged by the beneficiary's bank for transfers from the Agency;
      - excessive or reckless expenditure;
      - deductible VAT;



- VAT incurred by a public body acting as a public authority;
  - costs incurred during suspension of the implementation of the action;
  - in-kind contributions provided by third parties;
  - costs declared under other EU or Euratom grants (including those awarded by a Member State and financed by the EU or Euratom budget or awarded by bodies other than the Agency for the purpose of implementing the EU or Euratom budget); in particular, indirect costs if the beneficiary is already receiving an operating grant financed by the EU or Euratom budget in the same period;
  - costs incurred for permanent staff of a national administration, for activities that are part of its normal activities (i.e. not undertaken only because of the grant);
  - costs incurred for staff or representatives of EU institutions, bodies or agencies;
- [are claimed according to the euro conversion rate referred to in Article 15.6 of the Grant Agreement;]
- total **receipts** of **EUR** [insert number] ([insert amount in words]) have been declared under Article 5.3.3 of the Grant Agreement and
- the beneficiary's **accounting procedures** are in compliance with the accounting rules of the state in which it is established and permit direct reconciliation of the costs incurred for the implementation of the action covered by the EU grant with the overall statement of accounts relating to its overall activity.

[However, our audit opinion is **qualified** for:

- costs of EUR [insert number]
- receipts of EUR [insert number]

which in our opinion do not comply with the applicable rules.]

4. We are qualified/authorised to deliver this audit certificate [(for additional information, see appendix to this certificate)].
5. The beneficiary paid a **price** of EUR [insert number] (including VAT of EUR [insert number]) for this audit certificate. [OPTION 1: These costs are eligible (i.e. incurred within 60 days of the end of the action referred to in Article 3 of the Grant Agreement) and included in the financial statement.][OPTION 2: These costs were not included in the financial statement.]

Date, signature and stamp