

# CONTRACT for Sub-grant

between

[name of SME]

ENTERPRISE NO.

hereinafter called the "Contractor"

**AND**

SINTEF AS by it research institute SINTEF Industry  
hereinafter called "SINTEF"

ENTERPRISE NO.

**AND**

[NAME DATA PROVIDER]

ENTERPRISE NO

hereinafter called "Data provider"

hereinafter collectively referred as the "Contracting Parties".

on execution of a project, hereinafter called the Project, entitled: [name of the Project]

## § 1- Background information

The European Commission (hereinafter referred as the "Commission") and the DIY4U Consortium partners have signed the Grant Agreement No. 870148 for the implementation of an action named "Open Innovation Digital Platform and Fablabs for Collaborative Design and Production of personalised/customised FMCG", with the short name "DIY4U", (the "Action") within the framework of the European Union's Horizon 2020 Research and Innovation programme (the "Grant Agreement").

The Contractor has received the favourable resolution by the DIY4U Consortium partners and the external evaluators and therefore is entitled to receive funding and services according to the terms and conditions set out under this Contract.

The Contract aims at defining the framework of rights and obligations of the Contracting Parties for the development of the Project as defined in §2.

The Sub-grant is fully funded by European Union's Horizon 2020 Research and Innovation Programme - grant agreement No. 870148. The funds received by the DIY4U Consortium partners are owned by the Commission. SINTEF is a mere holder and manager of the funds.

It is not possible to accumulate for the Project this sub-grant with any other public aid.

## §2 - Nature and Scope of the Project

To be fulfilled based on the application and negotiations between the Contracting Parties.

### § 3 - Time Schedule

To be fulfilled based on the application and negotiations between the Contracting Parties.

### § 4 - Reporting

To be fulfilled based on the application and negotiations between the Contracting Parties.

### § 5 - Financial contribution, invoicing and recovery

The maximum financial contribution to be granted by the SINTEF to the Contractor shall not exceed the amount of 50 000 € (exclusive of VAT).

Two Contractor's cost categories are eligible:

A. Direct & Indirect cost

Purchase of a service by a knowledge provider on a daily fee basis and at reasonable market rates. The indirect costs charged by a knowledge provider shall not exceed 25% of the maximum financial contribution.

B. Travel costs

Travel costs shall not exceed 10% of the maximum financial contribution.

The financial contribution shall be invoiced upon the DIY4U Consortium approval of the final report.

In case the final project report is not approved by the DIY4U consortium, based on objective circumstances and with the appropriate motivations, no payment will be done and the Contractor shall resubmit a new version of the final project report.

In any case, the financial contribution to be paid will always be subject to:

o receipt of a correct invoice

o Payments to the Contractor will be made by SINTEF. In particular:

- SINTEF reserves the right to withhold the payments in case the Contractor does not fulfil with its obligations and tasks, and
- SINTEF is entitled to recover any payments already paid to a defaulting Contractor.

o All request for payment shall be denominated in Euros (EUR). Payments will be made by bank transfer 30 days from receipt of the correct invoice, provided that the payment requirements are met. Contractor is responsible for complying with any tax and legal obligations that might be attached to this financial contribution.

It is the responsibility of the Contractor to ensure that it is compliant with its national legislation.

If, on the basis of an audit (under Article 12), the Commission seeks to recover contributions from SINTEF, of financial contributions made to the Contractor under this Contract, due to a misuse of the funding received, the Contractor agrees to repay such amounts to SINTEF.

**§ 6 - Supplements to / Deviations from General Conditions for Sub-grant relating to the action entitled "Open Innovation Digital Platform and Fablabs for Collaborative Design and Production of personalised/customised FMCG**

To be fulfilled based on the application and negotiations between the Contracting Parties.

**§ 7 - Contract Documents**

This Contract consists of the following three parts:

1. The present document, also designated the "Special Conditions".
2. General Conditions for Sub-grant relating to the action entitled "Open Innovation Digital Platform and Fablabs for Collaborative Design and Production of personalised/customised FMCG"
3. Documents attached, as specified below:
  - Attachment 1 – Contractor's Background
  - Attachment 2 – Definition of Normal Operations
  - Attachment 3 – Sanctions

In the event of any discrepancies in the provisions of said three parts, they shall take priority in the order in which they are listed above.

This Contract has been signed in  copies, one for each Contracting Parties.

**For**

**For**

\_\_\_\_\_

\_\_\_\_\_

Date

Date

**For**

**For**

\_\_\_\_\_

\_\_\_\_\_

Date

Date

The last date stated shall be referred to as the effective date of the Contract.

**General Conditions for Sub-grant relating to the action entitled "Open Innovation Digital Platform and Fablabs for Collaborative Design and Production of personalised/customised FMCG"**

DRAFT

# General Conditions for Sub-grant

relating to

the Action entitled:

*"Open Innovation Digital Platform and Fablabs for Collaborative Design and Production of personalised/customised FMCG"*

Call identifier: HORIZON 2020 Framework Programme  
Call for proposal: H2020-NMBP-FOF-2019  
Type of action: IA - Innovation Action

## 1 Definition

**"Access Rights"** means rights to use the results of the Project or Contractor's Background under the terms and conditions laid down in the Contract.

### **"Affiliated Entities"**

Any legal entity that is:

- under the direct or indirect control of a legal entity referred to in Article 7, or
- under the same direct or indirect control as a legal entity referred to in Article 7, or
- directly or indirectly controlling a legal entity referred to in Article 7.

'Control' may take any of the following forms:

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

However the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:

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

### **"Contractor's Background"**

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

- (a) is held by the Contractor before the Contract is signed, and
- (b) is Needed to implement the Project or exploit the results of the Project and/ or Action pursuant to the provisions of this Contract.

Contractor must identify and list such Contractor's Background in Appendix 1.

### **"Exploitation/exploit"**

Direct or indirect use of results in the development and/or marketing of products, services or processes, or the transfer and/or licensing of use of results to third parties. Publication through publishing houses is not defined as exploitation.

### **"fair and reasonable conditions"**

Appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the Contractor's Background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.

### **"Force Majeure"**

Any situation or event that:

- prevents either party from fulfilling their obligations under the Contract,
- 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 Project), 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.

### **"Needed"**

means:

For the implementation of the Project and/or Action:

Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks under the Project and/or the Action would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.

For exploitation of results of the Project and/or Action:

Access Rights are Needed if, without the grant of such Access Rights, the exploitation of the results of the Project and/or Action would be technically or legally impossible.

## **2 Execution of the Project**

### **2.1 Work Program**

The Project shall be executed in accordance with the Work Program, Time Schedule and Budget as set forth in §§ 2,3, and 5 of the Special Conditions and in any Appendices thereto.

### **2.2 Reporting**

The Contractor shall submit Progress Reports and a Final Report as agreed on in § 4 in the Special Conditions.

The Contractor shall provide information on the progress of the Project at any time should SINTEF and/or the Data Provider so request.

SINTEF and/or the Data Provider (or their appointed representative) is entitled to review the progress of the Project during visits agreed on to the Contractors premises provided such visits will not incur the risk of divulging confidential information relating to projects for third parties.

### **2.3 Amendments**

Amendments or changes to this Contract shall be made in writing and signed by the duly authorized representative of the Contracting Parties. Nevertheless, In the event the Commission modifies the conditions, SINTEF will have the right to amend the Contract accordingly.

### **2.4 Termination**

SINTEF and the Data Provider in concertation shall at any time be entitled to require in writing that the Contractor terminate the Project. In the event the Project is terminated SINTEF shall pay the Contractor charges on man-hours and cost until the date of termination, as well as expenditures in connection with a proper winding down of the Project within the limit of the maximum financial contribution.

## **3 Compensation**

SINTEF shall honor the Contractor's invoices according to the prices and other financial provisions described in § 5 of the Special Conditions and in any Appendices thereto.

The maximum financial contribution is laid down exclusive of VAT and other governmental taxes but such taxes shall be added thereon when applicable according to the law.

Invoices shall be identified and be specified to support the invoiced amounts.

## **4 Assignment and subcontracting**

The Contractor shall not assign or transfer in whole or in part any of its rights or obligations under this Contract without the Contractor and the Data Provider express prior written consent.

In the event the Contractor is authorised to have portions of the Project be performed by one

of its own subcontractors, then such work shall be performed within the scope of the present Contract and such subcontractors shall not entail a risk that information which shall be treated confidential in accordance with Article 9 below be divulged to unauthorized persons.

## 5 Obligations and liabilities

### 5.1 Execution of Project

The Contractor is responsible for the execution of the Project in compliance with the applicable governmental laws, regulations and orders and the fundamental principle of research integrity — as set out, for instance, in the European Code of Conduct for Research Integrity.

This implies compliance with the following fundamental principles:

- **reliability** in ensuring the quality of research reflected in the design, the methodology, the analysis and the use of resources;
- **honesty** in developing, undertaking, reviewing, reporting and communicating research in a transparent, fair and unbiased way;
- **respect** for colleagues, research participants, society, ecosystems, cultural heritage and the environment;
- **accountability** for the research from idea to publication, for its management and organisation, for training, supervision and mentoring, and for its wider impacts and means that the Contractor must ensure that persons carrying out research tasks follow the good research practices and refrain from the research integrity violations described in this code.

These principles implies that the Contracting Parties 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**').

The Contracting Parties must formally notify to the Commission 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 Commission may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

If the Contractor breach any of its obligations under this Article, the grant may be reduced and the Contract may be terminated. Such breaches may also lead to any of the other measures described in Attachment 3.

The Contractor is responsible for the execution of the Project in compliance with the Work Program, Time Schedule and Budget and states to have competence and capacity to execute the Project in a professional manner and in accordance with accepted standards and norms related to this kind of work.

### 5.2 Liability of the Contracting Parties

In respect of any data, information or materials supplied by SINTEF and the Data Provider to the Contractor under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the Contractor shall in all cases be entirely and solely liable for the use to which it puts such data, information and materials, and
- the Contractor shall in all cases be entirely and solely liable in case of infringement of proprietary rights of a third party resulting from its (or its Affiliated Entities) exercise of its Access Rights.



The Contractor is responsible for any act or omission that causes damage to SINTEF, the Data Provider, and/or the Commission in relation to this Contract. If the Contractor is a start-up, all of its owners will be jointly responsible for the damages caused.

Neither SINTEF, the Data Provider, nor the Commission can be held liable for any acts or omissions of the Contractor in relation to this Contract.

Neither SINTEF or the Data Provider shall be held liable to the Contractor for consequential loss.

There is no joint liability between the Contracting Parties.

*NOTE: Liabilities between SINTEF and the Data Provider shall be finally settled following the provisions of the Consortium Agreement they have entered into for the Action.*

## **6 Insurance**

The Contracting Parties shall each carry and pay insurance necessary to cover risks inherent in the work related to the Project.

The insurance carried by the Contractor shall cover Workman's Compensation insurance, Employers Liability Insurance and General Public Liability Insurance which insurance shall be so executed as to provide that the Contractor's insurance company shall have no right, in connection with the Project to recover against SINTEF or the Data Provider.

## **7 Rights**

### **7.1 Results from the Project**

SINTEF and the other DIY4U Consortium partners shall have joint title to all rights and interest in and to all results from the Project — whatever their form or nature, whether it can be protected or not — as well as any rights attached to it, including intellectual property rights.

The Contractor and its Affiliates entities shall have a non-exclusive, royalty-free, worldwide, irrevocable, non-transferable, and non-sublicensable Access Rights to results from the Project it has solely generated after termination of the Action. Such Access rights is under the following cumulative conditions:

- The above-mentioned Access rights are limited to the Contractor and its Affiliated Entities' Exploitation within their own Normal operations as defined in Attachment 2
- The Contractor and its Affiliates entities are to provide information on EU funding (obligation and right to use the EU emblem etc):

Unless the Commission requests or agrees otherwise or unless it is impossible, any marketing activities of the results referred above (in any form, including electronic) must:

- (a) display the EU emblem and
- (b) include the following text:

*"This [insert type of result] is part of a project that has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870148"*

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

For the purposes of their obligations under this Article, the Contractor and its Affiliates entities may use the EU emblem without first obtaining approval from the Commission.

This does not, however, give the Contractor and its Affiliates entities the right to exclusive use.

### **7.1 Background and sideground**

The ownership of the data, information and materials provided by SINTEF and/or the Data

Provider to the Contractor are and remain the property of SINTEF and/or the Data Provider.

Access Rights to such data, information and materials provided by SINTEF and/or the Data Provider to the Contractor Needed for the performance of the own work of the Contractor under the Project shall be granted on a royalty-free basis.

The ownership of Contractor's Background is and remains the property of the Contractor.

In Attachment 1, the Contractor has identified and agreed on own Background for the Project and has also, where relevant, informed the other Contracting Parties that Access Right to specific Contractor's Background is subject to legal restrictions or limits.

Access Rights to Contractor's Background Needed for the performance of the own work of SINTEF and the other DIY4U Consortium partners under the Project and the Action shall be granted on a royalty-free basis.

Access Rights to Contractor's Background Needed for the Exploitation of the results of the Project and Action by SINTEF and the other DIY4U Consortium partners (including the Affiliates of such companies) shall be granted on Fair and Reasonable conditions.

## **8 Patents**

### **8.1 Patent Protection**

The Contractor shall assist SINTEF or the other DIY4U Consortium partners in an attempt at obtaining a desired patent protection, against ordinary payments for project work.

### **8.2 Patent Infringement**

The Contractor shall bear sole responsibility for ensuring that its acts within the framework of this Contract do not infringe third parties' rights.

## **9 Confidentiality**

9.1 - All information in whatever form or mode of communication, which is disclosed by a Contracting Party (the "Disclosing Party") to the other (the "Recipient") in connection with the Project and/or the Action during its implementation and which has been explicitly marked as "confidential" at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure as confidential information by the Disclosing Party, is "Confidential Information".

Notwithstanding the above and for the avoidance of doubt, the Contractor's Background (Attachment 1) and any other data, information and material made available to the Contractor are to be understood to be "Confidential".

9.2 - The Recipient hereby undertake, for a period of 4 years after the end of the Action:

- Not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipient including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipient may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

9.3 - The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

9.4 - The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure, or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Article 9.7 hereunder.

9.5 - The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

9.6 - Each Contracting Party shall promptly advise the other Contracting Party(ies) in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

9.7 - If any Contracting Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

## **9 Projects for other**

Subject to the confidentiality obligations, the Contractor shall be free to undertake projects for other clients within the same field concerning technology and market.

## **10 Publication and use of names, logos or trademarks.**

10.1 - The Contractor shall not publish information on the Project / Action or on results therefrom without the written consent of SINTEF and the other parties to the DIY4U Consortium Agreement.

- For any approved publication, the Contractor must ensure open access (free of charge online access for any user) to all peer-reviewed scientific publications relating to its results.

In particular, it must:

- (a) as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications;

Moreover, the Contractor must aim to deposit at the same time the research data needed to validate the results presented in the deposited scientific publications.

(b) ensure open access to the deposited publication — via the repository — at the latest:

(i) on publication, if an electronic version is available for free via the publisher, or

(ii) within six months of publication (twelve months for publications in the social sciences and humanities) in any other case.

(c) ensure open access — via the repository — to the bibliographic metadata that identify the deposited publication.

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

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

- Any approved publication must indicate that it reflects only the author's view and that the Commission is not responsible for any use that may be made of the information it contains.

Unless the Commission requests or agrees otherwise or unless it is impossible, any approved publication (including in electronic form, via social media, etc.) must:

(a) display the EU emblem and

(b) include the following text:

For publication activities:

*“This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 870148”.*

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

For the purposes of its obligations under this Article, the Contractor may use the EU emblem without first obtaining approval from the Commission.

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

10.2 – Subject to the confidentiality obligations in Article 36 and the security obligations in Article 37, the Commission may use, for its communication and publicising activities, information relating to the Action, documents notably summaries for publication and public deliverables as well as any other material, such as pictures or audio-visual material received from any beneficiary (including in electronic form).

If the Commission’s use of these materials, documents or information would risk compromising legitimate interests, the Contracting Party concerned may request the Commission not to use it.

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

(a) use for its own purposes (in particular, making them available to persons working for 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 1049/200127, without the right to reproduce or exploit;  
(f) storage in paper, electronic or other form;  
(g) archiving, in line with applicable document-management rules, and  
(h) the right to authorise third parties to act on its behalf or sub-license the modes of use set out in Points (b), (c), (d) and (f) to third parties if needed for the communication and publicizing activities of the Commission.

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

Where applicable (and if provided by the Contracting Party), the Commission will insert the following information:

*"© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the European Union (EU) under conditions."*

If a Contracting Party breaches any of its obligations under this Article, the grant may be reduced. Such breaches may also lead to any of the other measures described in Attachment 3.

10.3 - Nothing in this Contract shall be construed as conferring rights to use in advertising, publicity or otherwise the name of any of the DIY4U Consortium partners or any of their logos or trademarks without their prior written approval.

## **11 Instruments and equipment**

Non applicable

## **12 Audit**

### **12.1 Audit by SINTEF**

At any time during normal working hours SINTEF or its appointed representative shall have access to the premises of the Contractor, on an advance notice, to audit the Subcontractors accounts, HES and Quality Assurance system related to the Project and the Contractor shall render the assistance necessary at its own cost. Such rights shall be limited to four years after the latest invoicing.

### **12.2 Financial audits and controls by the Commission**

#### **12.2.1 Right to carry out checks**

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 Grant Agreement, including assessing deliverables and reports.

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

The Commission may request any information in order to verify eligibility of the costs, proper implementation of the action and compliance with any other obligation under the Grant Agreement.

The Commission may request the Contracting Parties to provide such information to it directly.

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

### **12.2.2 Right to carry out reviews**

Reviews may be started up to two years after the payment of the balance. They will be formally notified to SINTEF (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 the Contractor, the beneficiary concerned must inform the Contractor.

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, beneficiary concerned or the Contractor 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 Commission may request beneficiaries to provide such information to it directly.

The Coordinator, the beneficiary concerned and the Contractor may be requested to participate in meetings, including with external experts.

For on-the-spot reviews, the Contractor must allow access to its 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 Commission will formally notify the review report to the coordinator, the beneficiary concerned or the Contractor, which has 30 days to formally notify observations ('contradictory review procedure').

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

### **12.2.3 Right to carry out audits**

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 Grant Agreement.

Audits may be started up to two years after the payment of the balance. They will be formally notified to the Coordinator or beneficiary concerned and will be considered to have started on the date of the formal notification.

If the audit is carried out on the Contractor, the beneficiary concerned must inform the third party.

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

For on-the-spot audits, the beneficiaries and the Contractor 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 Commission will formally notify the draft audit report to the Coordinator, beneficiary concerned or the Contractor, which has 30 days to formally notify observations ('contradictory audit procedure'). This period may be extended by the Commission in justified cases.

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

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

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

Under Regulations No 883/201316 and No 2185/9617 (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.

### **12.4 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 966/201218, 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.

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

Findings in checks, reviews, audits or investigations carried out in the context of this Contract may lead to the rejection of ineligible costs, reduction of the grant, recovery of undue amounts or to any of the other measures described Attachment 3.

Rejection of costs or reduction of the grant after the payment of the balance will lead to a revised final grant amount.

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of the Contract.

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.

## **10 Reporting obligations for assignments to foreign companies and foreigners**

When applicable, the Contractor shall report to the Central Tax Office for Foreign Affairs of all employees working on assignments that are subject to reporting obligations in Norway or on the Norwegian continental shelf (including Norwegian residents). The duty applies to all production or service contracts, including contracts for hire or hire of work, provided that the

assignment has a value above NOK 20 000.

When applicable, the Contractor will also report to the Immigration Directorate and the local police office on the Contractor's employees from countries outside the EEA area each month. Failure to comply with the reporting obligation may result in sanctions in the form of compulsory fines imposed by the authorities. If the Contractor fails to comply with the above reporting obligation, with the consequence is that SINTEF and/or the Data Provider is fined, SINTEF and/or the Data Provider shall be entitled to demand that the Contractor pays the fine, with the addition of any interest and costs to SINTEF and/or the Data Provider.

## **11 Export control**

The Contracting Parties agrees to comply with applicable rules for export control. If the Contracting Parties performs work, including the export of products, technology and software requiring an export licence, it shall apply well in advance for the required licences and ensure that the other Contracting Parties shall have access to copies with the Export Control Classification Number (ECCN) at the time of application submission.

## **12 Data protection**

The Contracting Parties have the obligation to abide by the Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

The processing of personal data shall be carried out lawfully, fairly and in a transparent manner, collected for specified purposes and adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

The Contractor will use and process the data only for the purposes of this Contract and during the length of the Contract. Any unauthorised use is forbidden. In any event, neither SINTEF nor the Data Provider will be held responsible for any abusive use of data incurred into by the Contractor.

The Contractor shall not try to re-identify anonymised data. In the event that re-identification occurs, the Beneficiary commits not to use such data.

The Contractor shall delete, at the end of this Contract, the data to which the Contractor has been granted access during the Project, except where an agreement is entered into with SINTEF and/or the Data Provider.

The Contractor acknowledges that it will be the “data controller” of any new dataset of piece of personal information that the Contractor may produce in the course of the Project.

## **13 Breach of Contract**

### **13.1 In general**

Should one of the Contracting Parties realize that it cannot meet its obligations under the present Contract or considers the other Contracting Party(ies) to be in breach of its obligations hereunder, then said Contracting Party shall immediately so inform the other Contracting Party(ies).

### **13.2 The Contractor**

In the event SINTEF and/or the Data Provider has any objections to the Contractor's execution of the Project, then SINTEF and/or the Data Provider shall so inform the Contractor in writing and state the reasons thereof. Such information shall be dispatched within thirty days of receipt of the status report or the final report.



Should the Contractor be in breach of its obligations then after a reasonable notice period :

- SINTEF shall become entitled to withhold all payments as provided by § 5 of the Special Conditions until the Contractor has fulfilled its obligations, and/or
- SINTEF and the Data Provider shall become entitled to cease work, until the Contractor has fulfilled its obligations; and

In the case of bankrupt or receivership process or substantial breach, SINTEF and the Data Provider shall become entitled (upon concertation) to terminate the Contract.

### **13.3 SINTEF and / or the Data Provider**

Should SINTEF and / or the Data Provider be in breach of its obligations then after a reasonable notice period, the Contractor shall become entitled to cease work, until SINTEF and/or the Data Provider has fulfilled its obligations.

In the event invoices are not paid in due time or invoices in dispute become payable, then SINTEF shall be charged to the current interest on overdue payments in compliance with the Norwegian Act on interests concerning delayed payments of December 17, 1976 No. 100.

Both Article 13.2 and 13.3 govern that amounts not in dispute be paid in due time.

## **14 Force Majeure**

The Contracting Parties shall take the necessary measures to limit any damage due to Force majeure. They shall do their best to resume the implementation of the Project as soon as possible.

No Contracting Party shall be considered to be in breach of its obligations and tasks if such breach is caused by Force Majeure. A Contracting Party will notify the other Contracting Parties of any Force Majeure as soon as possible stating the nature, likely duration and foreseeable effects.

In case the Contractor is not able to overcome the consequences of Force Majeure within thirty (30) calendar days after such notification, SINTEF and the Data Provider will decide accordingly including the termination of the Contract.

## **15 Mandatory national law**

Nothing in this Contract shall be deemed to require a Contracting Party to breach any mandatory statutory law under which the Contracting Party is operating.

## **16 Langage**

This Contract is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

## **17 Disputes**

All disputes arising out of or in connection with this Contract, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Contracting Party.

The award of the arbitration will be final and binding upon the Contracting Parties.

Nothing in this Contract shall limit the Contracting Parties' right to seek injunctive relief in any applicable competent court.

*NOTE: All disputes arising out of or in connection with this Contract, which cannot be solved amicably between SINTEF and the Data Provider shall be finally settled following the provisions of the Consortium Agreement they have entered into for the Action.*

## **18 Governing Law**

This Contract shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

DRAFT

**Attachment 1 – Contractor's Background**

To be fulfilled based on the application and negotiation between the Contracting Parties.

DRAFT

**Attachment 2 – Definition of Normal Operations**

To be fulfilled based on the application and negotiation between the Contracting Parties.

DRAFT

**Attachment 3 – Sanctions**

DRAFT

- distribution of EU funding;
- additional rules on rights and obligations related to background and results (including whether access rights remain or not, if a beneficiary is in breach of its obligations) (see Section 3 of Chapter 4);
- settlement of internal disputes;
- liability, indemnification and confidentiality arrangements between the beneficiaries.

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

#### **41.4 Relationship with complementary beneficiaries — Collaboration agreement**

Not applicable

#### **41.5 Relationship with partners of a joint action — Coordination agreement**

Not applicable

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

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

#### **ARTICLE 42 — REJECTION OF INELIGIBLE COSTS**

##### **42.1 Conditions**

The Commission will — after **termination of the participation of a beneficiary**, 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 22).

The rejection may also be based on the **extension of findings from other grants to this grant** (see Article 22.5.2).

##### **42.2 Ineligible costs to be rejected — Calculation — Procedure**

Ineligible costs will be rejected in full.

If the rejection of costs does not lead to a recovery (see Article 44), the Commission 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 21.5). The coordinator or beneficiary concerned may — within 30 days of receiving notification — formally notify the Commission of its disagreement and the reasons why.

If the rejection of costs leads to a recovery, the Commission will follow the contradictory procedure with pre-information letter set out in Article 44.

### 42.3 Effects

If the Commission rejects costs at 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 Articles 20.3 and 20.4). It will then calculate the interim payment or payment of the balance as set out in Articles 21.3 or 21.4.

If the Commission rejects costs **after termination of the participation of a beneficiary**, it will deduct them from the costs declared by the beneficiary in the termination report and include the rejection in the calculation after termination (see Article 50.2 and 50.3).

If the Commission — **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 total eligible costs declared, for the action, in the next periodic summary financial statement or in the final summary financial statement. It will then calculate the interim payment or payment of the balance as set out in Articles 21.3 or 21.4.

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

## ARTICLE 43 — REDUCTION OF THE GRANT

### 43.1 Conditions

The Commission may — **after termination of the participation of a beneficiary, at the payment of the balance or afterwards** — reduce the grant amount (see Article 5.1), if :

- (a) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed:
  - (i) substantial errors, irregularities or fraud or
  - (ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or
- (b) a beneficiary (or a natural person who has the power to represent or take decision on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2).

### 43.2 Amount to be reduced — Calculation — Procedure

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

Before reduction of the grant, the Commission 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 Commission does not receive any observations or decides to pursue reduction despite the observations it has received, it will formally notify **confirmation** of the reduction (if applicable, together with the notification of amounts due; see Article 21).

### 43.3 Effects

If the Commission reduces the grant **after termination of the participation of a beneficiary**, it will calculate the reduced grant amount for that beneficiary and then determine the amount due to that beneficiary (see Article 50.2 and 50.3).

If the Commission reduces the grant **at the payment of the balance**, it will calculate the reduced grant amount for the action and then determine the amount due as payment of the balance (see Articles 5.3.4 and 21.4).

If the Commission reduces the grant **after the payment of the balance**, it will calculate the revised final grant amount for the beneficiary concerned (see Article 5.4). If the revised final grant amount for the beneficiary concerned is lower than its share of the final grant amount, the Commission will recover the difference (see Article 44).

## ARTICLE 44 — RECOVERY OF UNDUE AMOUNTS

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

The Commission will — after **termination of the participation of a beneficiary, at the payment of the balance or afterwards** — claim back any amount that was paid, but is not due under the Agreement.

Each beneficiary’s financial responsibility in case of recovery is limited to its own debt, except for the amount retained for the Guarantee Fund (see Article 21.4).

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

If recovery takes place after termination of a beneficiary’s participation (including the coordinator), the Commission will claim back the undue amount from the beneficiary concerned, by formally notifying it a debit note (see Article 50.2 and 50.3). This note will specify the amount to be recovered, the terms and the date for payment.

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

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



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

(b) not applicable;

(c) by **taking legal action** (see Article 57) or by **adopting an enforceable decision** under Article 299 of the Treaty on the Functioning of the EU (TFEU) and Article 79(2) of the Financial regulation No 966/2012.

If payment is not made by the date specified in the debit note, the amount to be recovered (see above) will be increased by **late-payment interest** at the rate set out in Article 21.11, from the day following the payment date in the debit note, up to and including the date the Commission receives full payment of the amount.

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

Bank charges incurred in the recovery process will be borne by the beneficiary, unless Directive 2007/64/EC<sup>29</sup> applies.

#### 44.1.2 Recovery at payment of the balance

If the payment of the balance takes the form of a recovery (see Article 21.4), the Commission will formally notify a '**pre-information letter**' to the coordinator:

- informing it of its intention to recover, the amount due as the balance and the reasons why;
- specifying that it intends to deduct the amount to be recovered from the amount retained for the Guarantee Fund;
- requesting the coordinator to submit a report on the distribution of payments to the beneficiaries within 30 days of receiving notification, and
- inviting the coordinator to submit observations within 30 days of receiving notification.

If no observations are submitted or the Commission decides to pursue recovery despite the observations it has received, it will **confirm recovery** (together with the notification of amounts due; see Article 21.5) and:

- pay the difference between the amount to be recovered and the amount retained for the Guarantee Fund, **if the difference is positive** or
- formally notify to the coordinator a **debit note** for the difference between the amount to be recovered and the amount retained for the Guarantee Fund, **if the difference is negative**. This note will also specify the terms and the date for payment.

If the coordinator does not repay the Commission by the date in the debit note and has not submitted

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<sup>29</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 05.12.2007, p. 1).

the report on the distribution of payments: the Commission will **recover** the amount set out in the debit note from the coordinator (see below).

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

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

$\left\{ \left\{ \left\{ \text{beneficiary's costs declared in the final summary financial statement and approved by the Commission multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned} \right\} \right\}$

divided by

$\left\{ \text{the EU contribution for the action calculated according to Article 5.3.1} \right\}$

multiplied by

$\left\{ \text{the final grant amount (see Article 5.3)} \right\}$ ,

minus

$\left\{ \text{pre-financing and interim payments received by the beneficiary} \right\}$ .

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

$\left\{ \text{amount calculated according to point (a) for the beneficiary concerned} \right\}$

divided by

$\left\{ \text{the sum of the amounts calculated according to point (a) for all the beneficiaries identified according to point (a)} \right\}$

multiplied by

$\left\{ \text{the amount set out in the debit note formally notified to the coordinator} \right\}$ .

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

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

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

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

(i) not applicable;

(ii) by **taking legal action** (see Article 57) 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 21.11, from the day following the payment date in the debit note, up to and including the date 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.

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

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

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

$\left\{ \left\{ \text{beneficiary's costs declared in the final summary financial statement and approved by the Commission multiplied by the reimbursement rate set out in Article 5.2 for the beneficiary concerned} \right\} \right\}$

divided by

$\left\{ \text{the EU contribution for the action calculated according to Article 5.3.1} \right\}$

multiplied by

$\left\{ \text{the final grant amount (see Article 5.3)} \right\}$ .

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

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

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

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

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

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

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

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

- (i) not applicable;
- (ii) by **taking legal action** (see Article 57) 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 21.11, from the day following the date for payment in the debit note, up to and including the date the Commission receives full payment of the amount.

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

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

## **ARTICLE 45 — ADMINISTRATIVE SANCTIONS**

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

## **SECTION 2 LIABILITY FOR DAMAGES**

### **ARTICLE 46 — LIABILITY FOR DAMAGES**

#### **46.1 Liability of the Commission**

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

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

Except in case of force majeure (see Article 51), the beneficiaries must compensate the Commission for any damage it sustains as a result of the implementation of the action or because the action was not implemented in full compliance with the Agreement.

## **SECTION 3 SUSPENSION AND TERMINATION**

### **ARTICLE 47 — SUSPENSION OF PAYMENT DEADLINE**

#### **47.1 Conditions**

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

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

## 47.2 Procedure

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

The suspension will **take effect** the day notification is sent by the Commission (see Article 52).

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

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

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

## ARTICLE 48 — SUSPENSION OF PAYMENTS

### 48.1 Conditions

The Commission may — at any moment — suspend payments, in whole or in part and interim payments or the payment of the balance 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 the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles) or
- (b) a beneficiary (or a natural person who has the power to represent or take decision on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2).

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

## 48.2 Procedure

Before suspending payments, the Commission 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 Commission 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 Commission.

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

During the suspension, the periodic report(s) for all reporting periods except the last one (see Article 20.3), must not contain any individual financial statements from the beneficiary concerned. 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 49.1) or terminate the Agreement or the participation of the beneficiary concerned (see Article 50.1 and 50.2).

## ARTICLE 49 — SUSPENSION OF THE ACTION IMPLEMENTATION

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

#### 49.1.1 Conditions

The beneficiaries may suspend implementation of the action or any part of it, if exceptional circumstances — in particular *force majeure* (see Article 51) — make implementation impossible or excessively difficult.

#### 49.1.2 Procedure

The coordinator must immediately formally notify to the Commission the suspension (see Article 52), stating:

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

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

Once circumstances allow for implementation to resume, the coordinator must immediately formally notify the Commission and request an **amendment** of the Agreement to set the date on which the action will be resumed, extend the duration of the action and make other changes necessary to adapt the action to the new situation (see Article 55) — unless the Agreement or the participation of a beneficiary has been terminated (see Article 50).

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

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

## 49.2 Suspension of the action implementation, by the Commission

### 49.2.1 Conditions

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

- (a) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed or is suspected of having committed:
  - (i) substantial errors, irregularities or fraud or
  - (ii) serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the action, submission of false information, failure to provide required information, breach of ethical principles);
- (b) a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed — in other EU or Euratom grants awarded to it under similar conditions — systemic or recurrent errors, irregularities, fraud or serious breach of obligations that have a material impact on this grant (**extension of findings from other grants to this grant**; see Article 22.5.2), or
- (c) the action is suspected of having lost its scientific or technological relevance.

### 49.2.2 Procedure

Before suspending implementation of the action, the Commission 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 Commission 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 55) — unless the Agreement has already been terminated (see Article 50).

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

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

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

Suspension of the action implementation does not affect the Commission's right to terminate the Agreement or participation of a beneficiary (see Article 50), reduce the grant or recover amounts unduly paid (see Articles 43 and 44).

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

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

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

The beneficiaries may terminate the Agreement.

The coordinator must formally notify termination to the Commission (see Article 52), stating:

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

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

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

#### **50.1.2 Effects**

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

- (i) a periodic report (for the open reporting period until termination; see Article 20.3) and
- (ii) the final report (see Article 20.4).

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

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

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

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

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

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