**ANNEX3**

**Development of Innovative optical commercial sensors**

Sub-Grant Agreement Template

Document Control Information

|  |  |
| --- | --- |
| Settings | Value |
| Classification Level: | *Insert classification level* |
| Distribution remark: | *Insert distribution remark* |
| Document Title: | *Insert document title* |
| Project Title: | *Insert project title* |
| Document Author: | *Insert name of document author* |
| Project Owner: | *Insert name of project owner* |
| Project Manager: | *Insert name of project manager* |
| Document Version: | *Insert document version* |
| Sensitivity: | Internal |
| Date: | *Insert date (DD/MM/YYYY)* |

Document history

|  |  |  |  |
| --- | --- | --- | --- |
| Revision | Date | Authors | Short Description of Changes |
| First Version | *26/01/2024* | E. Vellutini  R. Angeletti  C. Jobic |  |
|  |  |  |  |

|  |  |
| --- | --- |
|  |  |

**Sub-Grant Agreement**

**Number - [Project ACRONYM]**

**PREAMBLE**

This **Agreement** (“the Agreement”) for providing financial support to Third Parties, is between the following Parties:

**on the one part,**

**AGENZIA SPAZIALE ITALIANA - ASI,** public entity, established in via del Politecnico snc, 00133 Rome – C.F. n. 97061010589 rappresented by General Director Luca Vincenzo Maria Salamone domiciled for the office at the ASI headquarters, via del Politecnico snc, 00133 Rome hereinafter referred as the „**ASI**” or **“Contractor”**. ASI acts on behalf of the EU SST Partnership (Grant Agreement N° 2023-26EUSST GA)

and

**on the other part,**

1. **OFFICIAL NAME OF THE SELECTED THIRD PARTY (Acronym)[Sub-project Leader]**, [field for legal status] organised under the laws of [Country], established in [ADDRESS – STREET, POSTCODE, CITY, COUNTRY ], with VAT No [\_\_\_\_\_\_], PIC [\_\_\_\_\_\_], duly represented by [Legal Representative], [Legal Representative Position],
2. **OFFICIAL NAME OF THE SELECTED THIRD PARTY (Acronym)**, [field for legal status] under the laws of [Country], established in [ADDRESS – STREET, POSTCODE, CITY, COUNTRY ], with VAT No [\_\_\_\_\_\_], PIC [\_\_\_\_\_\_] duly represented by [Legal Representative], [Legal Representative Position].
3. ….

hereinafter referred to as the **“Subgrantee“** or **“Subgrantees“.**

Hereinafter, all contracting parties of this Agreement jointly or individually, referred to as **"Parties”** or **“Party”**.

Have agreed to enter into the Agreement relating to the Project entitled [Project NAME], hereinafter referred as the [Sub-Project ACRONYM] under the terms and conditions below.

**WHEREAS**

* Austrian Research Promotion Agency (FFG), Ministry of Transport of the Czech Republic (MDCR), Deutsches Zentrum für Luft- und Raumfahrt e.V. (DLR), Air Command Denmark (ACD), Centro para el Desarrollo Tecnológico y la Innovación (CDTI), Finnish Meteorological Institute (FMI), Centre National d’Etudes Spatiales (CNES), National Observatory of Athens (NOA), Agenzia Spaziale Italiana (ASI), Ministry of Education and Science of the Republic of Latvia (IZM), Ministry of Economic Affairs and Climate Policy (MEZK), Polish Space Agency (POLSA), Ministry of National Defense (GP SST), Agenţia Spaţială Română (ROSA) and Swedish National Space Agency (SNSA) (herinafter sometimes collectively referred as the „EU SST Partnership” and individually and alternatively referred as „EU SST Constituting National Entity” or „Beneficiariy” participate to the EUSST2023-26 Project for the „provision of SST services and the upgrade of SST assets by the EU SST Partnership” (herinafter „EUSST2023-26 Project”) ;
* The EUSST2023-26 Partnership entered into Grant Agreement EUSST2023-26GA with the European Commission (hereinafter the ‘Grant Agreement’ or ‘GA’’) on August 30th 2023 ;
* A part of the activities under EUSST2023-26GA will be dedicated to promote and support commercial data providers (radars, optical sensors and passive ranging sensors, laser ranging and other suitable sensor types) either on-ground or space based located. In order to increase the quality and quantity of the population of the EUSST Database and the Catalogue and the provision of services, EU SST will contribute to the funding of the development of innovative commercial sensors. The main objective is to increase the proportion of commercial data up to 50% by 2026;
* Thereto EUSST2023-26 involves financial support to third parties through a cascade funding scheme (hereinafter “**Cascade Funding**”) to support the development of innovative commercial sensors in order to increase the proportion of commercial data in EUSST ;
* Further to the Call for Proposals „Innovative Commercial Sensors” targeting commercial data providers in the EU, the Subgrantees have been selected to implement such [Project Name], as described in Annex 1;
* The Agreement aims at defining the framework of rights and obligations of the Parties for the development of the Project as defined in Annex 1.

By signing the Agreement, the Subgrantees accept the grant and agree to implement the action under their own responsibility and in accordance with the Agreement, with all the obligations and terms and conditions it sets out.

The Agreement is composed of:

Preamble

Terms and Conditions

Annex 1 Description of the Project

Annex 2 Estimated budget for the Project

Annex 3 Model for the financial statements

Annex 4 Technical specification

Annex 5 Form for the assessment of participation conditions

Annex 6 Data Provision Agreement

Terms and Conditions

Table of contents

[CHAPTER 1 - GENERAL 10](#_Toc158385830)

[Article 1. Subject of the Agreement 10](#_Toc158385831)

[Article 2. Definitions 10](#_Toc158385832)

[CHAPTER 2 - PROJECT 11](#_Toc158385833)

[Article 3. Project 11](#_Toc158385834)

[Article 4. Duration and starting date 11](#_Toc158385835)

[CHAPTER 3 - GRANT 11](#_Toc158385836)

[Article 5. Grant 11](#_Toc158385837)

[5.1 Form of grant 11](#_Toc158385838)

[5.2 Maximum grant amount 11](#_Toc158385839)

[5.3 Funding rate 12](#_Toc158385840)

[5.4 Co-funding rules 12](#_Toc158385841)

[5.5 Estimated budget, budget categories and forms of funding 12](#_Toc158385842)

[5.6 Budget flexibility 12](#_Toc158385843)

[Article 6. Eligible and ineligible costs and contributions 12](#_Toc158385844)

[6.1 General eligibility conditions 12](#_Toc158385845)

[6.2 Specific eligibility conditions for each budget category 13](#_Toc158385846)

[6.3 Ineligible costs and contributions 16](#_Toc158385847)

[6.4 Consequences of non-compliance 16](#_Toc158385848)

[CHAPTER 4 GRANT IMPLEMENTATION 17](#_Toc158385849)

[SECTION 1 SUBGRANTEES 17](#_Toc158385850)

[Article 7. Subgrantees 17](#_Toc158385851)

[Article 8. Subcontractors 18](#_Toc158385852)

[Article 9. Participation conditions 18](#_Toc158385853)

[9.1 Conditions for participation 18](#_Toc158385854)

[9.2 Waivers 20](#_Toc158385855)

[9.3 Changes 21](#_Toc158385856)

[SECTION 2 RULES FOR CARRYING OUT THE PROJECT 22](#_Toc158385857)

[Article 10. Proper implementation of the project 22](#_Toc158385858)

[Article 11. Conflict of interests 22](#_Toc158385859)

[Article 12. Confidentiality and security 22](#_Toc158385860)

[Article 13. Ethics and values 24](#_Toc158385861)

[Article 14. Data protection 24](#_Toc158385862)

[Article 15. Intellectual property rights (IPR) – background and results – access rights and rights of use 25](#_Toc158385863)

[Article 16. Communication, dissemination and visibility 27](#_Toc158385864)

[Article 17. Consequences of non compliance 29](#_Toc158385865)

[SECTION 3 GRANT ADMINISTRATION 30](#_Toc158385866)

[Article 18. General information obligations 30](#_Toc158385867)

[Article 19. Record-keeping 30](#_Toc158385868)

[Article 20. Reporting 31](#_Toc158385869)

[Article 21. Payments and recoveries – calculation of amounts due 33](#_Toc158385870)

[Article 22. Guarantees 39](#_Toc158385871)

[Article 23. Certificates 39](#_Toc158385872)

[Article 24. Checks, reviews, audits and investigations 40](#_Toc158385873)

[Article 25. Impact evaluation 42](#_Toc158385874)

[CHAPTER 5 CONSEQUENCES OF NON-COMPLIANCE 44](#_Toc158385875)

[SECTION 1 REJECTIONS AND GRANT REDUCTION 44](#_Toc158385876)

[Article 26. Rejection of costs 44](#_Toc158385877)

[Article 27. Grant reduction 44](#_Toc158385878)

[SECTION 2 SUSPENSION AND TERMINATION 45](#_Toc158385879)

[Article 28. Payment deadline suspension 45](#_Toc158385880)

[Article 29. Payment suspension 46](#_Toc158385881)

[Article 30. Grant suspension 47](#_Toc158385882)

[Article 12. Grant or subgrantee termination 48](#_Toc158385883)

[SECTION 3 OTHER CONSEQUENCES 53](#_Toc158385884)

[Article 32. Damages 53](#_Toc158385885)

[SECTION 4 FORCE MAJEURE 54](#_Toc158385886)

[Article 34. Force majeure 54](#_Toc158385887)

[CHAPTER 6 FINAL PROVISIONS 55](#_Toc158385888)

[Article 35. Agreement for access to data 55](#_Toc158385889)

[Article 36. Communication between the parties 55](#_Toc158385890)

[Article 37. Calculation of periods and deadlines 56](#_Toc158385891)

[Article 38. Amendments 56](#_Toc158385892)

[Article 39. Addition of new subgrantee(s) 57](#_Toc158385893)

[Article 40. Transfer of the agreement 57](#_Toc158385894)

[Article 41. Assignments of claims for payment against ASI 57](#_Toc158385895)

[Article 42. Applicable law and settlement of disputes 57](#_Toc158385896)

[Article 43. Entry into force 58](#_Toc158385897)

# GENERAL

## Article 1. Subject of the Agreement

This Agreement sets out the rights and obligations and terms and conditions applicable to the Sub-grant awarded for the implementation of the project [Project Name] set out in Chapter 2.

## Article 2. Definitions

For the purpose of this Agreement, the following definitions apply:

Project — The project which is being funded in the context of this Agreement.

Grant — The Sub-grant awarded in the context of this Agreement.

EU grants — Grants awarded by EU institutions, bodies, offices or agencies (including EU executive agencies, EU regulatory agencies, EDA, joint undertakings, etc.).

Participants — Entities participating in the project as sub-grantees or subcontractors

Sub-grantees — The signatories of this Agreement

Purchases — Contracts for goods, works or services needed to carry out the project (e.g. equipment, consumables and supplies) but which are not part of the project tasks (see Annex 1).

Subcontracting — Contracts for goods, works or services that are part of the project tasks (see Annex 1).

In-kind contributions — In-kind contributions within the meaning of Article 2(36) of EU Financial Regulation 2018/1046, i.e. non-financial resources made available free of charge by third parties.

Fraud — Fraud within the meaning of Article 3 of EU Directive 2017/1371[[1]](#footnote-2) and Article 1 of the Convention on the protection of the European Communities’ financial interests, drawn up by the Council Act of 26 July 1995[[2]](#footnote-3), as well as any other wrongful or criminal deception intended to result in financial or personal gain.

Irregularities — Any type of breach (regulatory or contractual) which could impact the EU financial interests, including irregularities within the meaning of Article 1(2) of EU Regulation 2988/95[[3]](#footnote-4).

Grave professional misconduct — Any type of unacceptable or improper behaviour in exercising one’s profession, especially by employees, including grave professional misconduct within the meaning of Article 136(1)(c) of EU Financial Regulation 2018/1046.

Applicable EU, international and national law — Any legal acts or other (binding or non-binding) rules and guidance in the area concerned.

# PROJECT

## Article 3. Project

The grant is awarded for the project [Project Name - acronym] (‘project’), as described in Annex 1.

## Article 4. Duration and starting date

The duration of the Project, as laid down in Annex 1, will be [Number of months] months as of [Starting date] :

* Starting date cost eligibility : \_\_\_\_\_\_\_
* End date cost eligibility : \_\_\_\_\_\_\_

# GRANT

## Article 5. Grant

### Form of grant

The grant takes the form of an ctual cost grant (i.e. a grant based on costs actually incurred by the subgrantee).

### Maximum grant amount

The maximum grant amount provided by ASI to the Subgrantee(s) for the implementation of the [Project Name] project is \_\_\_\_\_\_\_ € (Amount written in words) as set out in following table :

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Number** | **Role** | **Short name** | **Legal name** | **Country** | **PIC** | **Total eligible costs** | **Maximum grant amount** |
| 1 | COO |  |  | [country] |  | [amount] | [amount] |
| 2 | SG |  |  | [country] |  | [amount] | [amount] |
| 3 | SG |  |  | [country] |  | [amount] | [amount] |
| Total | | | | | | [amount] | [amount] |

### Funding rate

The funding rate for costs is \_\_\_\_ (maximum **45**)% of the project’s eligible costs. Contributions are not subject to any funding rate.

### Co-funding rules

The subgrantees must contribute to the implementation of the project for a mimumum of 55% of the eligible costs, either by way of own resources or by financial contribution from third parties. These resources or contributions may not (directly or indirectly) include EU budget funds.

### Estimated budget, budget categories and forms of funding

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

It contains the estimated eligible costs and contributions for the project, broken down by sub-grantee and budget category.

Annex 2 shows the types of costs and contributions (forms of funding)[[4]](#footnote-5) to be used for each budget category. .

### Budget flexibility

The budget breakdown may be adjusted — without an amendment (see Article 39) — by transfers (between budget categories), as long as this does not imply any substantive or important change to the description of the project in Annex 1.

However:

* other changes (for exemple transfers between subgrantees) require an amendment or simplified approval, if specifically provided for in Article 6.2

## Article 6. Eligible and ineligible costs and contributions

In order to be eligible, costs and contributions must meet the eligibility conditions set out in this Article.

### General eligibility conditions

The **general eligibility conditions** for actual costs are the following:

* they must be actually incurred by the subgrantee
* they must be incurred in the period set out in Article 4 (with the exception of costs relating to the submission of the final report, which may be incurred afterwards; see Article 21)
* they must be declared under one of the budget categories set out in Article 6.2 and Annex 3
* they must be incurred in connection with the project as described in Annex 1 and necessary for its implementation
* they must be identifiable and verifiable, in particular recorded in the subgrantee’s accounts in accordance with the accounting standards applicable in the country where the subgrantee is established and with the subgrantee’s usual cost accounting practices
* they must comply with the applicable national law on taxes, labour and social security and
* they must be reasonable, justified and must comply with the principle of sound financial management, in particular regarding economy and efficiency

1. In addition, for direct cost categories (e.g. personnel, travel & subsistence, subcontracting and other direct costs) only costs that are *directly* linked to the project implementation and can therefore be attributed to it *directly* are eligible. They must not include any *indirect* costs (i.e. costs that are only indirectly linked to the project, e.g. via cost drivers) which have to be reported separately with a percentage of 7% on all direct costs.

### Specific eligibility conditions for each budget category

For each budget category, the **specific eligibility conditions** are as follows:

**Direct costs**

**A. Personnel costs**

**A.1** **Costs for** **employees (or equivalent)** are eligible as personnel costs, if they fulfil the general eligibility conditions and are related to personnel working for the subgrantee under an employment contract (or equivalent appointing act) and assigned to the project.

They must be limited to salaries, social security contributions, taxes and other costs linked to the remuneration, if they arise from national law or the employment contract (or equivalent appointing act) and be calculated on the basis of the costs actually incurred.

The number of day-equivalents declared for a person must be identifiable and verifiable.

The personnel costs may also include supplementary payments for personnel assigned to the project (including payments on the basis of supplementary contracts regardless of their nature), if:

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

**A.2** and **A.3 Costs for** **natural persons working under a direct contract** other than an employment contract and costs for **seconded persons by a third party against payment** are also eligible as personnel costs, if they are assigned to the project, fulfil the general eligibility conditions and:

1. work under conditions similar to those of an employee (in particular regarding the way the work is organised, the tasks that are performed and the premises where they are performed) and
2. the result of the work belongs to the subgrantee (unless agreed otherwise).

They must be calculated on the basis of a rate which corresponds to the costs actually incurred for the direct contract or secondment and must not be significantly different from those for personnel performing similar tasks under an employment contract with the subgrantee.

**B. Subcontracting costs**

**Subcontracting costs** for the project (including related duties, taxes and charges,such as non-deductible or non-refundable value added tax (VAT)) are eligible, if they are calculated on the basis of the costs actually incurred, fulfil the general eligibility conditions and are awarded using the subgrantee’s usual purchasing practices — provided these ensure subcontracts with best value for money (or if appropriate the lowest price) and that there is no conflict of interests (see Article 12).

Subgrantees that are ‘contracting authorities/entities’ within the meaning of the EU Directives on public procurement must also comply with the applicable national law on public procurement.

The tasks to be subcontracted and the estimated cost for each subcontract must be set out in Annex 1 and the total estimated costs of subcontracting per subgrantee must be set out in Annex 3 (or may be approved ex post in the periodic report, if the use of subcontracting does not entail changes to the Agreement which would call into question the decision awarding the grant or breach the principle of equal treatment of applicants; ‘simplified approval procedure’).

**C. Purchase costs**

**Purchase costs** for the project (including related duties, taxes and charges,such as non-deductible or non-refundable value added tax (VAT)) are eligible, if they fulfil the general eligibility conditions and are bought using the subgrantee’s usual purchasing practices — provided these ensure purchases with best value for money (or if appropriate the lowest price) and that there is no conflict of interests (see Article 11).

Subgrantees that are ‘contracting authorities/entities’ within the meaning of the EU Directives on public procurement must also comply with the applicable national law on public procurement.

**C.1 Travel and subsistence**

Purchases for **travel, accommodation** and **subsistence** must be calculated as follows:

* travel:as costs actually incurred and in line with the subgrantee’s usual practices on travel
* accommodation: as costs actually incurred and in line with the subgrantee’s usual practices on travel
* subsistence:as costs actually incurred and in line with the subgrantee’s usual practices on travel.

**C.2 Equipment**

Purchases of **equipment, infrastructure or other assets** can be declared as either **depreciation costs** or **full costs**.

Equipment, infrastructure or other assets purchased specifically for the action (or developed as part of the action tasks) may be declared as full capitalised costs, if they fulfil the cost eligibility conditions and if they are listed in the SubGrant Agreement; additionally, eligibility of full costs shall only concern equipment, infrastructure or assets that are directly linked to the core objectives of the project, and if the purchase is duly justified and necessary from a technical perspective for the implementation of the project. Therefore full equipment costs should be previously agreed upon and named in the subGrant Agreement.

‘Capitalised costs’ means:

- costs incurred in the purchase or for the development of the equipment, infrastructure or other assets and,

- which are recorded under a fixed asset account of the beneficiary in compliance with international accounting standards and the beneficiary’s usual cost accounting practices.

If such equipment, infrastructure or other assets are rented or leased, full costs for renting or leasing are eligible, if they do not exceed the purchase costs of similar equipment, infrastructure or assets and do not include any financing fees.

Other equipment, infrastructure or other assets used for the action, must be declared as depreciation costs, on the basis of the costs actually incurred and written off in accordance with international accounting standards and the beneficiary’s usual accounting practices.

Only the portion of the costs that corresponds to the rate of actual use for the action during the action duration can be taken into account.

Costs for renting or leasing such equipment, infrastructure or other assets are also eligible, if they do not exceed the depreciation costs of similar equipment, infrastructure or assets and do not include any financing fees

**C.3 Other goods, works and services**

Purchasesof **other goods, works and services** must be calculated on the basis of the costs actually incurred.

Such goods, works and services include, for instance, consumables and supplies,promotion,dissemination, protection of results, translations, publications, certificates and financial guarantees, if required under the Agreement.

**D. Indirect costs**

**Indirect costs** will be reimbursed at the flat-rate of 7% of the eligible direct costs (categories A-C).

### Ineligible costs and contributions

The following costs or contributions are **ineligible**:

1. costs or contributions that do not comply with the conditions set out above (Article 6.1 and 6.2), in particular:
2. costs related to return on capital and dividends paid by a subgrantee
3. debt and debt service charges
4. provisions for future losses or debts
5. interest owed
6. currency exchange losses
7. bank costs charged by the subgrantee’s bank for transfers from ASI
8. excessive or reckless expenditure
9. deductible or refundable VAT (including VAT paid by public bodies acting as public authority)
10. costs incurred or contributions for activities implemented during grant agreement suspension (see Article 31)
11. in-kind contributions by third parties
12. costs or contributions declared under other EU grants (or grants awarded by an EU Member State, non-EU country or other body implementing the EU budget)
13. costs or contributions (especially travel and subsistence) for staff or representatives of EU institutions, bodies or agencies
14. other costs or contributions declared specifically in
    1. Consequences of non-compliance

If a subgrantee declares costs or contributions that are ineligible, they will be rejected (see Article 26).

This may also lead to other measures described in Chapter 5.

# CHAPTER 4 GRANT IMPLEMENTATION

## SECTION 1 SUBGRANTEES

## Article 7. Subgrantees

The subgrantees, as signatories of the Agreement, are fully responsible towards ASI for implementing it and for complying with all its obligations.

They must implement the Agreement to their best abilities, in good faith and in accordance with all the obligations and terms and conditions it sets out.

They must have the appropriate resources to implement the project and implement the project under their own responsibility and in accordance with Article 11. If they rely on or other participants (see Article 8), they retain sole responsibility towards ASI and the other subgrantees.

In case of implementation of the project by a consortium :

The subgrantees constituing the consortium are jointly responsible for the technical implementation of the project. If one of the subgrantees fails to implement their part of the project, the other subgrantees must ensure that this part is implemented by someone else (without being entitled to an increase of the maximum grant amount and subject to an amendment ; see Article 39). The financial responsibility of each subgrantee in case of recoveries is governed by Article 22.

The subgrantees (and their project) must remain eligible under the EU programme funding the grant for the entire duration of the project. Costs and contributions will be eligible only as long as the subgrantee and the project are eligible.

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

1. Each subgrantee must:
2. inform ASI (and the other subgrantees) immediately of any events or circumstances likely to affect significantly or delay the implementation of the project (see Article 18)
3. submit to the coordinator in good time:

* the financial statements and certificates on the financial statements (CFS) if required
* the contribution to the deliverables and technical reports
* any other documents or information required by ASI under the Agreement

1. The coordinator must:
2. monitor that the project is implemented properly
3. act as the intermediary for all communications between the consortium and ASI, unless the Agreement or ASI specifies otherwise, and in particular:

* request and review any documents or information required and verify their quality and completeness before passing them on to ASI
* submit the deliverables and reports to ASI
* inform ASI about the payments made to the other subgrantees

1. distribute the payments received from ASI to the other subgrantees without unjustified delay (see Article 20).

The subgrantees must have **internal arrangements** regarding their operation and co-ordination, to ensure that the project is implemented properly.

These arrangements must be set out in a written **consortium agreement** between the subgrantees and must not contain any provision contrary to this Agreement.

#### 

## Article 8. Subcontractors

Subcontractors may participate in the project, if necessary for the implementation.

Subcontractors must implement their tasks in accordance with Article 11. The costs for the subcontracted tasks (invoiced price from the subcontractor) are eligible and may be charged by the subgrantees, under the conditions set out in Article 6. The costs will be included in Annex 2 as part of the subgrantees costs.

The subgrantees must ensure that their contractual obligations under Articles 9 (participation conditions), 10 (proper implementation), 11 (conflict of interest), 12 (confidentiality and security), 13 (ethics), 16.2 (visibility), 18 (information) and 19 (record-keeping) also apply to the subcontractors.

The subgrantees must ensure that the bodies mentioned in Article 24 (e.g. ASI, OLAF, Court of Auditors (ECA), etc.) can exercise their rights also towards the subcontractors.

## Article 9. Participation conditions

### 9.1 Conditions for participation

In order to protect the essential security interest of the European Union and its Member States, the project shall involve only **economic operators** **(subgrantees, sub-contractors, whatever their position in the subcontracting chain)** which shall fulfil the following three cumulative conditions :

1. being legal entities established in an EU Member State with their executive management structures established in that EU Member State.

Economic operators are considered to be established in the EU when they are formed in accordance with the law of an EU Member State, and have their central administration, registered office and principal place of business in an EU Member State (if legal persons) or they are nationals of one ofthe EU Member States (if natural persons).

‘Executive management structure’ means the body of the legal entity appointed in accordance with national law and which, where applicable, reports to the chief executive officer or any other person having comparable decisional power, and which is empowered to establish the legal entity's strategy, objectives and overall direction, and oversees and monitors management decision-making;

1. committing to carry out all relevant activities in one or more EU Member States. This includes operations and deployment of sensors on third-country territories; and
2. not being subject to control by a third country or third country entity. For the purpose of this paragraph, ‘control’ means the ability to exercise a decisive influence over a legal entity directly or indirectly through one or more intermediate legal entities.

These participation conditions shall be met by the operators throughout the whole duration of the resulting subcontract. In case of any changes related to the compliance with these participation conditions, the economic operator, which was awarded the grant, or is involved in a subcontract, shall inform ASI about the changes without delay.

The information to be provided to ASI who will provide it to the Commission for its assessment of compliance of operators to the criteria a), b) and c) above are described in Annex 5 (Form for the assessment of the participation conditions). The entities who have successfully submitted the information / documents / supporting evidence requested in the Annex in the setting of another procedure of the European Commission or EUSPA (notably in the frame of EU Regulations 2018/1092, 2021/697 or 2021/696), or in the setting of a procedure of ESA (in Galileo, EGNOS, Galileo/EGNOS upstream R&D of Horizon Europe, GOVSATCOM) have no obligation to repeat the exercise, provided the time that has elapsed since the issuing of the information / documents / supporting evidence does not exceed one year at the time of submission of the tender and at the condition that the information provided is still valid at the date of submission. In such case, the entity shall declare on its honour that the documentary evidence has already been provided in a previous procedure as per the above, providing the reference of that procedure (in the Annex to the Cover letter) and confirm that there has been no change in the situation described in the previous procedure. Upon request of the Commission, the information / documents / supporting evidence already submitted as per the above, shall be resubmitted. The delivery shall be made before contract signature, and no contract shall be signed without confirmation by the European Commission that the entity complies with the participating conditions defined in this article. The outcome of the Commission’s assessment shall be communicated to the requestor thereafter.

### 9.2 Waivers

In this Agreement, the European Commission may, upon a motivated and justified request, decide to waive any of the conditions laid down under points a), b) and c) of article 9.1 with regard to any entity, which is involved in the agreement or a subcontract.

The European Commission may, upon a motivated and justified request, decide to waive the conditions under points a) and/or b) of article 9.1 only if:

* for specific technologies, goods or services needed for the activities, no substitutes are readily available in the Member States;
* such (sub)contract shall not require generation nor exchange of EU Classified Information;
* assurance is provided regarding to the integrity and resilience of the EU SST operations and services, as confirmed by the competent authority of ASI.

The waiver under points a) and/or b) of article 9.1 will not be automatically granted even if the assurances mentioned are met and the entity provides the assessment of a competent authority as regards its guarantees. The request for waiver shall be made before contract signature, and no contract shall be signed without confirmation by the European Commission that the waiver is granted. The outcome of the assessment shall be communicated to the requestor thereafter.

The European Commission may, upon a motivated and justified request, decide to waive the condition under point c of article 9.1. When the request for waiver refers to point c) of article 9.1, it shall include the assessment from a competent authority of the EU Member State in which the entity is established guaranteeing that:

1. control over the entity is not exercised in a manner that restrains or restricts its ability to:

(i) carry out the activities subject to the (sub)contract; and

(ii) deliver results, in particular through reporting obligations;

1. the controlling third country or third country entity commits to refrain from exercising any controlling rights over or imposing reporting obligations on the entity in relation to the subcontract; and
2. the entity in question has taken all the necessary measures to ensure:
   1. the security of EU SST in light of the confidentiality of the sensitive information, and in particular, if the subcontract involves classified information, information defined as EU Classified Information
   2. and the robustness of the mechanisms put in place to comply with points a) and b)

The waiver under point c) of article 9.1. will not be automatically granted even if the conditions a), b) and c) are met and the entity provides the assessment of a competent authority as regards its guarantees. The request for waiver shall be made before contract signature, and no contract shall be signed without confirmation by the European Commission that the waiver is granted. The outcome of the assessment shall be communicated to the requestor thereafter.

The conditions set out above do not apply to subcontractors that do not carry out security sensitive activities, or for unspecialised commercial off the shelf (COTS) hardware and software e.g. services, general purposes software licenses, etc. The following activities are not considered critical and security sensitive:

* communication and outreach activities to attract new SST users, in EU Member States but also and in particular in the world
* expert guidance and advice on standardisation activities of the Commission in the field of Space Traffic Management

### 9.3 Changes

In case of any changes related to the compliance with these participation conditions, the economic operator, which was granted financial support to third parties, or which is involved in a subcontract, shall inform ASI about the changes without delay.

## SECTION 2 RULES FOR CARRYING OUT THE PROJECT

## Article 10. Proper implementation of the project

The subgrantees have the obligation to properly implement the project as described in Annex 1 and in compliance with the provisions of the Agreement, the call conditions and all legal obligations under applicable EU, international and national law.

#### 

## Article 11. Conflict of interests

The subgrantees must take all measures to prevent any situation where the impartial and objective implementation of the Agreement could be compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect interest (‘conflict of interests’).

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

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

## Article 12. Confidentiality and security

##### 12.1 Confidentiality

The parties must keep confidential any data, documents or other material (in any form) that is identified as sensitive in writing (‘sensitive information’) — during the implementation of the project and for at least until 5 years after the final payment.

If a subgratee requests, ASI may agree to keep such information confidential for a longer period.

Unless otherwise agreed between the parties, they may use sensitive information only to implement the Agreement.

The subgrantees may disclose sensitive information to their personnel or other participants involved in the project only if they:

1. need to know it in order to implement the Agreement and
2. are bound by an obligation of confidentiality.

ASI may disclose sensitive information to its staff, to the European Comission and to other EU institutions and bodies.

It may moreover disclose sensitive information to third parties, if:

1. this is necessary to implement the Agreement or safeguard the EU financial interests and
2. the recipients of the information are bound by an obligation of confidentiality.

The confidentiality obligations no longer apply if:

1. the disclosing party agrees to release the other party
2. the information becomes publicly available, without breaching any confidentiality obligation
3. the disclosure of the sensitive information is required by EU, international or national law.

**Sensitive information with a security recommandation**

Sensitive information with a security recommendation must comply with the additional requirements imposed by the European Commission. Before starting the tasks concerned, the subgrantees must have obtained all approvals or other mandatory documents needed for implementing the task.

The documents must be kept on file and be provided upon request by the coordinator to ASI for submission to the European Commission. If they are not in English, they must be submitted together with an English summary.

For requirements restricting disclosure or dissemination, the information must be handled in accordance with the recommendation and may be disclosed or disseminated only after written approval from the European Commission.

##### 12.2 Classified information

The parties must handle classified information in accordance with the applicable EU, international or national law on classified information (in particular, Decision 2015/444[[5]](#footnote-6) and its implementing rules).

If EU classified information is used or generated by the project, it must be treated in accordance with the security classification guide (SCG) and security aspect letter (SAL) and Decision 2015/444' and its implementing rules — until it is declassified.

Deliverables which contain classified information must be submitted according to special procedures agreed with ASI and the European Commission.

Project involving classified information may be subcontracted only after explicit approval (in writing) from ASI.

Classified information may not be disclosed to any third party (including participants involved in the project implementation) without prior explicit written approval from ASI.

## Article 13. Ethics and values

##### 13.1 Ethics

The project must be carried out in line with the highest ethical standards and the applicable EU, international and national law on ethical principles.

##### 13.2 Values

The subgrantees must commit to and ensure the respect of basic EU values (such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities).

## Article 14. Data protection

##### 14.1 Data processing by ASI

Any personal data under the Agreement will be processed under the responsibility of the data controller of ASI in accordance with the applicable regulations.

##### 14.2 Data processing by the Subgrantees

The subgrantees must process personal data under the Agreement in compliance with the applicable EU, international and national law on data protection (in particular, Regulation 2016/679[[6]](#footnote-7)).

They must ensure that personal data is:

* processed lawfully, fairly and in a transparent manner in relation to the data subjects
* collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes
* adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed
* accurate and, where necessary, kept up to date
* kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data is processed and
* processed in a manner that ensures appropriate security of the data.

The subgrantees may grant their personnel access to personal data only if it is strictly necessary for implementing, managing and monitoring the Agreement. The subgrantees must ensure that the personnel is under a confidentiality obligation.

The subgrantees must inform the persons whose data are transferred to ASI.

## Article 15. Intellectual property rights (IPR) – background and results – access rights and rights of use

##### 15.1 Background and access rights to background

The subgrantees must, where industrial and intellectual property rights (including rights of third parties) exist prior to the Agreement, establish a list of these pre-existing industrial and intellectual property rights, specifying the rights owners. The subgrantee or coordinator must — before starting the project — submit this list to ASI.

In case of implementation of the project by a consortium, the subgrantees must give each other and the other participants access to the background identified as needed for implementing the project.

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

1. held by the subgrantees before they acceded to the Agreement and
2. needed to implement the project or exploit the results.

If background is subject to rights of a third party, the subgrantee concerned must ensure that it is able to comply with its obligations under the Agreement.

##### 15.2 Ownership of results

ASI does not obtain ownership of the results produced under the project.

‘Results’ means any tangible or intangible effect of the project, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights.

##### 15.3 Rights of use on materials, documents and information received for policy, information, communication, dissemination and publicity purposes

ASI has the right to use non-sensitive information relating to the project and materials and documents received from the subgrantees (notably summaries for publication, deliverables, as well as any other material, such as pictures or audio-visual material, in paper or electronic form) for policy, information, communication, dissemination and publicity purposes — during the project or afterwards.

The right to use the subgratees’ materials, documents and information is granted in the form of a royalty-free, non-exclusive and irrevocable licence, which includes the following rights:

1. **use for its own purposes** (in particular, making them available to persons working for ASI, the European Commission or any other EU service (including institutions, bodies, offices, agencies, etc.) or EU Member State institution or body; copying or reproducing them in whole or in part, in unlimited numbers; and communication through press information services)
2. **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)
3. **editing or redrafting** (including shortening, summarising, inserting other elements (e.g. 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)
4. **translation**
5. **storage** in paper, electronic or other form
6. **archiving**, in line with applicable document-management rules
7. the right to authorise **third parties** to act on its behalf or sub-license to third parties the modes of use set out in Points (b), (c), (d) and (f), if needed for the information, communication and publicity activity of ASI and
8. **processing**, analysing, aggregating the materials, documents and information received and producing derivative works.

The rights of use are granted for the whole duration of the industrial or intellectual property rights concerned.

These rights of use are extended to the European Commission.

If materials or documents are subject to moral rights or third party rights (including intellectual property rights or rights of natural persons on their image and voice), the subgrantees must ensure that they comply with their obligations under this Agreement (in particular, by obtaining the necessary licences and authorisations from the rights holders concerned).

Where applicable, ASI will insert the following information:

“© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the **[**name of Contractor] under conditions.”

##### 15.4 Rights of use on operational qualification data

ASI has the right to use the operational qualification data provided by the subgrantees under „Phase 2 – Validation Period” as set out in Annexe 4.

The subgrantees grant ASI and the EU SST Partnership a non-exclusive licence of use for the provided data, for a duration of five years, worldwide, and in the frame of the EU SST project.

This covers all the rights listed below :

* the right to reproduce, in unlimited numbers, all or part of the data, by any means or
* processes, on any current or future, known or unknown media or hardware, and in particular
* on hard copy, digital, electronic or computer media, by downloading, media exchanges or
* network transfers ;
* the right to represent the data by any current or future, known or unknown means of

distribution and communication ;

* the right to translate all or part of the data into any language and any programming
* language, and reproduce the resulting documents on any current or future, known or
* unknown media or hardware ;
* the right to arrange, adapt or make any other changes to the data supplied ;
* the right to grant all or part of the rights listed above with the right to sub-license the data
* to third parties in order to meet the needs arising from the subject of the Agreement

The licensing of the above-mentioned rights is free of charge and free of return in pay.

## Article 16. Communication, dissemination and visibility

##### 16.1 Communication — Dissemination — Promoting the project

Unless otherwise agreed with ASI, the subgrantees must promote the action and its results by providing targeted information to multiple audiences (including the media and the public), in accordance with Annex 1 and in a strategic, coherent and effective manner.

Before engaging in a communication or dissemination activity expected to have a major media impact, the subgrantees must inform ASI.

##### 16.2 Visibility — European flag and funding statement

Unless otherwise agreed with ASI, communication activities of the subgrantees related to the project (including media relations, conferences, seminars, information material, such as brochures, leaflets, posters, presentations, etc., in electronic form, via traditional or social media, etc.), dissemination activities and any infrastructure, equipment, vehicles, supplies or major result funded by the grant must acknowledge EU support and display the European flag (emblem) and funding statement (translated into local languages, where appropriate):







The emblem must remain distinct and separate and cannot be modified by adding other visual marks, brands or text.

Apart from the emblem, no other visual identity or logo may be used to highlight the EU support.

When displayed in association with other logos (e.g. of subgrantees, ASI or other sponsors), the emblem must be displayed at least as prominently and visibly as the other logos.

For the purposes of their obligations under this Article, the subgrantees may use the emblem without first obtaining approval from ASI. This does not, however, give them the right to exclusive use. Moreover, they may not appropriate the emblem or any similar trademark or logo, either by registration or by any other means.

##### 16.3 Quality of information — Disclaimer

Any communication or dissemination activity related to the action must use factually accurate information.

Moreover, it must indicate the following disclaimer (translated into local languages where appropriate):

“Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or [name of the Contractor]. Neither the European Union nor the Contractor can be held responsible for them.”

#### 

## Article 17. Consequences of non compliance

If a subgrantee breaches any of its obligations under this Section 2 of Chapter 4, the grant may be reduced (see Article 27).

Such a breach may also lead to other measures described in Chapter 5.

## SECTION 3 GRANT ADMINISTRATION

## Article 18. General information obligations

##### 18.1 Information requests

The subgrantees must provide — during the project or afterwards and in accordance with Article 7 — any information requested in order to verify eligibility of the costs or contributions declared, proper implementation of the project and compliance with the other obligations under the Agreement.

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

##### 18.2 Legal data updates

The subgrantees must inform ASI of any changes in the legal information regarding their entity, in particular, their name, address, legal representatives, legal form and organisation type.

##### 18.3 Information about events and circumstances which impact the project

The subgrantees must immediately inform ASI (and the other subgrantees) of any of the following:

1. **events** which are likely to affect or delay the implementation of the project or affect the EU’s financial interests, in particular changes in their legal, financial, technical, organisational or ownership situation (including changes linked to one of the exclusion grounds listed in the declaration of honour signed before agreement signature)
2. **circumstances** affecting:
3. the decision to award the grant or
4. compliance with requirements under the Agreement.

#### 

## Article 19. Record-keeping

The subgrantees must — at least until 5 years after the final payment — keep records and other supporting documents to prove the proper implementation of the project in line with the accepted standards in the respective field (if any).

1. In addition, the subgrantees must — for the same period — keep the following to justify the amounts declared: adequate records and supporting documents to prove the costs declared (such as contracts, subcontracts, invoices and accounting records); in addition, the subgrantees’ usual accounting 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 documents
2. for personnel costs: time worked for the subgrantee under the action must be supported by declarations signed monthly by the person and their supervisor, unless another reliable time-record system is in place; ASI may accept alternative evidence supporting the time worked for the action declared, if it considers that it offers an adequate level of assurance

The records and supporting documents must be made available upon request (see Article 19) or in the context of checks, reviews, audits or investigations (see Article 24).

If there are on-going checks, reviews, audits, investigations, litigation or other pursuits of claims under the Agreement, the subgrantees must keep these records and other supporting documentation until the end of these procedures.

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

## Article 20. Reporting

##### 20.1 Continuous reporting

The subgrantees must continuously report on the progress of the action (e.g. **deliverables,** **milestones**, **outputs/outcomes,** **critical risks, indicators,** etc; if any), in accordance with the timing and conditions set out in the Statement of Works.

##### 20.2 Periodic reporting: Technical reports and financial statements

In addition, the subgrantees must provide reports to request payments, in accordance with the schedule and modalities set out in the following table :

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Reporting** | | | | | | **Payments** | |
| **Reporting periods** | | | | **Type** | **Deadline** | **Type** | **Deadline** |
| **RP No** | **Month from** | | **Month to** |  |  |  |  |
| 1 | | *1* | *6* | Periodic report : Critical Intermediate Review 1 (CIR1) | *[Date]* | Interim payment | 30 days from receiving payment request |
| 2 | | *7* | *[number]* | Periodic report : Critical Intermediate Review X (CIRX) | *[Date]* | Interim payment | 30 days from receiving payment request |
| *[number]* | | *[number]* | *[number]* | Periodic report : Pre Acceptance Final Review (PreFar) | *[Date]* | Interim payment | 30 days from receiving payment request |
| *[number]* | | *[number]* | *[number]* | Periodic report : Final Acceptance Review (Far) | *[Date]* | Final payment | 30 days from receiving payment request |

The periodic reports include a technical and financial part.

The technical part includes an overview of the project implementation. The deliverables associated with each report are detailed in the Statement of Works.

The financial part of the periodic report includes:

* the financial statements (individual and consolidated; for all subgrantees)
* the explanation on the use of resources
* the certificates on the financial statements (CFS) for each subgrantee if one of the following conditions is met:
  + the cumulative amount of payments the subgrantee requests as reimbursement of actual costs (and for which no certificate has yet been submitted) is > EUR 325 000 or more
  + the maximum grant amount indicated for that subgrantee in the estimated budget as reimbursement of actual costs is EUR 750 000 or more
* report on the subgrantees’ **contributions to finance** the new sensors or the upgrades of sensors.

The **financial statements** must detail the eligiblecosts and contributions for each budget category and, for the final payment, also the possible revenues for the action (see Articles 6 ).

All eligible costs and contributions incurred should be declared, even if they exceed the amounts indicated in the estimated budget (see Annex 2). Amounts that are not declared in the individual financial statements will not be taken into account by the Contracting.

By signing the financial statements, the subgrantees confirm that:

* + the information provided is complete, reliable and true
  + the costs and contributions declared are eligible (see Article 6)
  + the costs and contributions can be substantiated by adequate records and supporting documents (see Article 19) that will be produced upon request (see Article 18) or in the context of checks, reviews, audits and investigations (see Article 24)
  + for the final periodic report: all the revenues have been declared (if required; see Article 21).

##### 20.3 Currency for financial statements

The financial statements must be drafted in euro.

Subgrantees must convert costs incurred in another currency into euro according to their usual accounting practices.

##### 20.4 Reporting language

The reporting must be in the language of the Agreement, unless otherwise agreed with ASI.

##### 20.5 Consequences of non-compliance

If a report submitted does not comply with this Article, ASI may suspend the payment deadline (see Article 28) and apply other measures described in Chapter 5.

If the coordinator breaches its reporting obligations, ASI may terminate the grant or the coordinator’s participation (see Article 31) or apply other measures described in Chapter 5.

## Article 21. Payments and recoveries – calculation of amounts due

##### 21.1 Payments and payment arrangements

Payments will be made in accordance with the schedule and modalities set out in Article 20.

The estimated maximum amounts of the payments are set out in the following table :

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Subgrantee** | **Payment schedule reference** | **Prefinancing**  **Amount** | **Ceiling amount per Review** | | | | **Total**  **Maximum grant amount** |
| **Interim Payment   CIR1** | **Interim Payment   CIR2** | **Interim Payment  PreFAR** | **Final  Payment\*  FAR** |
| 1 |  | [amount] | [amount] | [country] | [amount] | [amount] | [amount] |
| 2 |  | [amount] | [amount] | [country] | [country] | [amount] | [amount] |
| 3 |  | [amount] | [amount] | [country] | [country] | [amount] | [amount] |
| Total | | [amount] | [amount] | [country] | [country] | [amount] | [amount] |

**\*** Final Payment will be at least 15% of the grant amount

Payments will be made in euro to the following bank account(s) :

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Number** | **Short name** | **Legal name** | **Country** | **Bank Account** |
| 1 |  |  | [country] | [bank details] |
| 2 |  |  | [country] | [bank details] |
| 3 |  |  | [country] | [bank details] |

The cost of payment transfers will be borne as follows:

* ASI bears the cost of transfers charged by its bank
* the subgrantee bears the cost of transfers charged by its bank
* the party causing a repetition of a transfer bears all costs of the repeated transfer.

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

##### 21.2 Recoveries

Recoveries will be made, if — at subgrantee termination, final payment or afterwards — it turns out that ASI has paid too much and needs to recover the amounts undue.

The general liability regime for recoveries (first-line liability) is as follows:

At final payment, the subgrantee will be fully liable for recoveries.

In case of enforced recoveries (see Article 21.5):

* the subgrantees will be jointly and severally liable for repaying debts of another subgrantee under the Agreement (including late-payment interest), if required by ASI

##### 21.3 Amounts due

**21.3.1 Prefinancing payments**

The aim of the prefinancing is to provide the subgrantees with a float. It remains the property of ASI until the final payment.

The amount due, schedule and modalities of the **prefinancing** are set out in Article 21.1.

Payments will not be made if the payment deadline or payments are suspended (see Articles 28 and 29).

**21.3.2 Amount due at subgrantee — Recovery**

In case of subgrantee termination, ASI will determine the provisional amount due for the subgrantee concerned. Payments (if any) will be made with the next interim or final payment.

The **amount due** will be calculated in the following step:

Step 1 — Calculation of the total accepted financial support to third parties

Step 1 — Calculation of the total accepted financial support

ASI will first calculate the ‘accepted financial support’ for the subgrantee for all reporting periods, by calculating the ‘maximum financial support to costs’ (applying the funding rate to the accepted costs of the subgrantee), taking into account requests for a lower contribution to costs and CFS threshold cappings (if any) and adding the contributions .

After that, ASI will take into account grant reductions (if any). The resulting amount is the ‘total accepted Financial support’ for the subgrantee.

The **balance** is then calculated by deducting the payments received (if any), from the total accepted financial support:

{total accepted financial support for the subgrantee

minus

{prefinancing and interim payments received (if any)}}.

If the balance is **positive**, the amount will be included in the next interim or final payment.

If the balance is **negative**, it will be **recovered** in accordance with the following procedure:

ASIwill send a **pre-information letter** to the subgrantee concerned:

* formally notifying the intention to recover, the amount due, the amount to be recovered and the reasons why and
* requesting observations within 30 days of receiving notification.

If no observations are submitted (or ASI decides to pursue recovery despite the observations it has received), it will confirmthe amount to be recovered and ask this amount to be paid to the coordinator (**confirmation letter**).

The amounts will later on also be taken into account for the next interim or final payment.

**21.3.3 Interim payments**

Interim payments reimburse the eligible costs and contributions claimed for the implementation of the project during the reporting periods (if any).

Interim payments (if any) will be made in accordance with the schedule and modalities set out in Articles 20.2 and 21.1.

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 **interim payment** will be calculated by ASI in the following steps:

Step 1 — Calculation of the total accepted financial support

Step 2 — Limit to the interim payment ceiling.

Step 1 — Calculation of the total accepted financial support

ASI will calculate the ‘accepted financial support’ for the project for the reporting period, by first calculating the ‘maximum financial support to costs’ (applying the funding rate to the accepted costs of each subgrantee), taking into account requests for a lower contribution to costs, and CFS threshold cappings (if any) and adding the contributions ).

After that, ASI will take into account grant reductions from subgrantee termination (if any). The resulting amount is the ‘total accepted financial support’.

Step 2 — Limit to the interim payment ceiling

The resulting amount is then capped to ensure that the total amount of prefinancing and interim payments (if any) does not exceed the payment ceilings set out in Article 21.1.

Payments will not be made ifthe payment deadline or payments are suspended (see Articles 28 and 29).

**21.3.4 Final payment — Final grant amount — Revenues and Profit — Recovery**

The final payment (payment of the balance) reimburses the remaining part of the eligible costs and contributions claimed for the implementation of the project (if any).

The final payment will be made in accordance with the schedule and modalities set out in Articles 20.2 and 21.1.

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

The **final grant amount for the project** will be calculated in the following steps:

Step 1 — Calculation of the total accepted financial support

Step 2 — Limit to the maximum grant amount

Step 3 — Reduction due to the no-profit rule

Step 1 — Calculation of the total accepted financial support

ASI will first calculate the ‘accepted financial support’ for the project for all reporting periods, by calculating the ‘maximum financial support to costs’ (applying the funding rate to the total accepted costs of each subgrantee), taking into account requests for a lower contribution to costs, CFS threshold cappings (if any) and adding the contributions After that, ASI will take into account grant reductions (if any). The resulting amount is the ‘total accepted Financial support’.

Step 2 — Limit to the maximum grant amount

If the resulting amount is higher than the maximum grant amount set out in Article 5.2, it will be limited to the latter.

Step 3 — Reduction due to the no-profit rule

The grant must not produce a profit (i.e. surplus of the amount obtained following Step 2 plus the project’s revenues, over the eligible costs and contributions approved by ASI).

‘Revenue’ is all income generated by the project, during its duration (see Article 4), for subgrantees that are profit legal entities.

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

The **balance** (final payment) is then calculated by deducting the total amount of prefinancing and interim payments already made (if any), from the final grant amount:

{final grant amount

minus

{prefinancing and interim payments made (if any)}}.

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

Payments will not be made ifthe payment deadline or payments are suspended (see Articles 28 and 29).

If the balance is **negative**, it will be **recovered** in accordance with the following procedure:

ASIwill send a **pre-information letter** to the subgrantee :

* formally notifying the intention to recover, the final grant amount, the amount to be recovered and the reasons why
* requesting observations within 30 days of receiving notification.

If no observations are submitted (or ASI decides to pursue recovery despite the observations it has received), it will confirmthe amount to be recovered(**confirmation letter**), together with a **debit note** with the terms and date for payment.

If payment is not made by the date specified in the debit note, ASI will **enforce recovery** in accordance with Article 21.5.

**21.3.5 Audit implementation after final payment — Revised final grant amount — Recovery**

If — after the final payment (in particular, after checks, reviews, audits or investigations; see Article 25) — ASI rejects costs or contributions (see Article 26) or reduces the grant (see Article 28), it will calculate the **revised final grant amount** for the subgrantee concerned.

The **subgrantee revised final grant amount** will be calculated in the following step:

Step 1 — Calculation of the revised total accepted financial support

Step 1 — Calculation of the revised total accepted financial support

ASI will first calculate the ‘revised accepted financial support’ for the subgrantee, by calculating the ‘revised accepted costs’ and ‘revised accepted contributions’.

After that, it will take into account grant reductions (if any). The resulting ‘revised total accepted financial support’ is the subgrantee revised final grant amount.

If the revised final grant amount is lower than the subgrantee’s final grant amount (i.e. its share in the final grant amount for the project), it will be **recovered** in accordance with the following procedure:

The **subgrantee final grant amount** (i.e. share in the final grant amount for the project) is calculated as follows:

**{**{{total accepted financial support for the subgrantee

divided by

total accepted Financial support for the project}

multiplied by

final grant amount for the project**}**.

ASI will send a **pre-information letter** to the subgrantee concerned:

* formally notifying the intention to recover, the amount to be recovered and the reasons why and
* requesting observations within 30 days of receiving notification.

If no observations are submitted (or ASI decides to pursue recovery despite the observations it has received), it will confirm the amount to be recovered (**confirmation letter**), together with a **debit note** with the terms and the date for payment.

If payment is not made by the date specified in the debit note, ASI will **enforce recovery** in accordance with Article 21.5.

##### 21.4 Payment requests

After validation of the (periodic or final) report and calculation of the payment, ASI will inform the subgrantees to issue and submit their payment request.

Payment requests are drawn up in one original copy, in the name of the AGENZIA SPAZIALE ITALIANA - ASI. They must refer to the Agreement reference in full. They must include, in full, the reference of the payment schedule and the details of the event entitling payment. In the absence of the identifying description, the progress payment requests shall be sent back to the subgrantee.

These payment requests may not be issued before completion of the event entitling payment.

Payment requests are sent electronically via the Chorus online portal, to which invoices are uploaded: https://chorus-pro.gouv.fr

As an exception, if an invoice is sent by post, it shall be drawn up and printed in one original copy sent to:

AGENZIA SPAZIALE ITALIANA -ASI

VIA DEL POLITECNICO, SNC

00133 ROMA

ITALIA

##### 21.5 Enforced recovery

If payment is not made by the date specified in the debit note, the amount due will be recovered:

1. byoffsetting the amount — without the coordinator or subgrantee’s consent — against any amounts owed to the coordinator or subgrantee by ASI.

In exceptional circumstances, to safeguard the EU financial interests, the amount may be offset before the payment date specified in the debit note.

1. by holding other subgrantees jointly and severally liable
2. by taking legal action (see Article 42).

The amount to be recovered will be increased by **late-payment interest**, from the day following the payment date in the debit note, up to and including the date the full payment is received.

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 subgrantee.

##### 21.6 Consequences of non-compliance

f the coordinator breaches any of its obligations under this Article, the grant may be reduced (see Article 27) and the grant or the coordinator may be terminated (see Article 31).

Such breaches may also lead to other measures described in Chapter 5.

## Article 22. Guarantees

**N/A**

#### 

## Article 23. Certificates

**The subgrantees must provide certificates on their financial statements (CFS), in accordance with the schedule, threshold and conditions set out in Articles 20 and 21.**

The coordinator must submit them as part of the periodic report (see Article 20).

The certificates must be drawn up using the template provided in Annex 3, cover the costs declared on the basis of actual costs and costs according to usual cost accounting practices (if any), and fulfil the following conditions:

1. be provided by a qualified approved external auditor which is independent and complies with Directive 2006/43/EC[[7]](#footnote-8) (or for public bodies: by a competent independent public officer)
2. the verification must be carried out according to the highest professional standards to ensure that the financial statements comply with the provisions under the Agreement and that the costs declared are eligible.

The certificates will not affect ASI’s or European Commissions right to carry out its own checks, reviews or audits, nor preclude the European Court of Auditors (ECA), the European Public Prosecutor’s Office (EPPO) or the European Anti-Fraud Office (OLAF) from using their prerogatives for audits and investigations under the Agreement (see Article 24).

If the costs (or a part of them) were already audited by ASI, these costs do not need to be covered by the certificate and will not be counted for calculating the threshold (if any).

If a subgrantee does not submit a certificate on the financial statements (CFS) or the certificate is rejected, the accepted financial support to costs will be capped to reflect the CFS threshold.

If a subgrantee breaches any of its other obligations under this Article, ASI may apply the measures described in Chapter 5.

## Article 24. Checks, reviews, audits and investigations

##### 24.1 Checks, reviews and audits

**24.1.1 Internal checks**

ASI may — during the project or afterwards — check the proper implementation of the project and compliance with the obligations under the Agreement, including assessing costs and contributions, deliverables and reports.

**24.1.2 Project reviews**

ASI may carry out reviews on the proper implementation of the project and compliance with the obligations under the Agreement (general project reviews or specific issues reviews).

Such project reviews may be started during the implementation of the project and until 5 years after the final payment. They will be formally notified to the coordinator or subgrantee concerned and will be considered to start on the date of the notification.

If needed, ASI may be assisted by independent, outside experts. If it uses outside experts, the coordinator or subgrantee concerned will be informed and have the right to object on grounds of commercial confidentiality or conflict of interest.

The coordinator or subgrantee concerned must cooperate diligently and provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted (including information on the use of resources). ASI may request beneficiaries to provide such information to it directly. Sensitive information and documents will be treated in accordance with Article 12.

The coordinator or subgrantee concerned may be requested to participate in meetings, including with the outside experts.

For **on-the-spot** visits, the subgrantee concerned must allow access to sites and premises (including to the outside experts) 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 **project review report** will be drawn up.

ASI will formally notify the project review report to the coordinator or subgrantee concerned, which has 30 days from receiving notification to make observations.

Project reviews (including project review reports) will be in the language of the Agreement, unless otherwise agreed with ASI.

**24.1.3** **Audits**

ASI may carry out audits on the proper implementation of the project and compliance with the obligations under the Agreement.

Such audits may be started during the implementation of the project and until 5 years after the final payment. They will be formally notified to the subgrantee concerned and will be considered to start on the date of the notification.

ASI may use its own audit service, delegate audits to a centralised service or use external audit firms. If it uses an external firm, the subgrantee concerned will be informed and have the right to object on grounds of commercial confidentiality or conflict of interest.

The subgrantee concerned must cooperate diligently and provide — within the deadline requested — any information (including complete accounts, individual salary statements or other personal data) to verify compliance with the Agreement. Sensitive information and documents will be treated in accordance with Article 12.

For **on-the-spot** visits, the subgrantee concerned must allow access to sites and premises (including for the external audit firm) 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 auditors will formally notify the draft audit report to the subgrantee concerned, which has 30 days from receiving notification to make observations (contradictory audit procedure).

The **final audit report** will take into account observations by the subgrantee concerned and will be formally notified to them.

Audits (including audit reports) will be in the language of the Agreement, unless otherwise agreed with ASI.

##### 24.2 European Commission checks, reviews and audits

The European Commission has the same rights of checks, reviews and audits as ASI.

##### 24.3 Access to records for assessing simplified forms of funding

The beneficiaries must give the Contracter and European Commission access to their statutory records for the periodic assessment of simplified forms of funding which are used in EU programmes*.*

##### 24.4 OLAF, EPPO and ECA audits and investigations

The following bodies may also carry out checks, reviews, audits and investigations — during the project or afterwards:

* the European Anti-Fraud Office (OLAF) under Regulations No 883/2013[[8]](#footnote-9) and No 2185/96[[9]](#footnote-10)
* the European Public Prosecutor’s Office (EPPO) under Regulation 2017/1939
* the European Court of Auditors (ECA) under Article 287 of the Treaty on the Functioning of the EU (TFEU) and Article 257 of EU Financial Regulation 2018/1046.

If requested by these bodies, the subgrantee concerned must provide full, accurate and complete information in the format requested (including complete accounts, individual salary statements or other personal data, including in electronic format) and allow access to sites and premises for on-the-spotvisits or inspections — as provided for under these Regulations.

To this end, the subgrantee concerned must keep all relevant information relating to the project, at least until 5 years after the final payment and, in any case, until any ongoing checks, reviews, audits, investigations, litigation or other pursuits of claims have been concluded.

##### 24.5 Consequences of checks, reviews, audits and investigations

Findings in checks, reviews, audits or investigations carried out in the context of this grant may lead to rejections (see Article 26), grant reduction (see Article 27) or other measures described in Chapter 5.

Rejections or grant reductions after the final payment will lead to a revised final grant amount (see Article 21).

Findings in checks, reviews, audits or investigations during the project implementation may lead to a request for amendment (see Article 38), to change the description of the project set out in Annex 1.

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

##### 24.6 Consequences of non-compliance

If a subgrantee breaches any of its obligations under this Article, costs or contributions 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 other measures described in Chapter 5.

## Article 25. Impact evaluation

##### 25.1 Impact evaluation

ASI may carry out impact evaluations of the project, measured against the objectives and indicators of the EU programme funding the grant under which the financial support is awarded.

Such evaluations may be started during implementation of the project and until 5 years after the final payment. They will be formally notified to the coordinator or subgrantees and will be considered to start on the date of the notification.

If needed, ASI may be assisted by independent outside experts.

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

##### 25.2 Consequences of non-compliance

If a subgrantee breaches any of its obligations under this Article, ASI may apply the measures described in Chapter 5.

# CHAPTER 5 CONSEQUENCES OF NON-COMPLIANCE

## SECTION 1 REJECTIONS AND GRANT REDUCTION

## Article 26. Rejection of costs

##### 26.1 Conditions

ASI will — at subgrantee termination, interim payment, final payment or afterwards — reject any costs or contributions which are ineligible (see Article 6), in particular following checks, reviews, audits or investigations (see Article 24).

##### 26.2 Procedure

If the rejection does not lead to a recovery, ASI will formally notify the coordinator or subgrantee concerned of the rejection, the amounts and the reasons why. The coordinator or subgrantee concerned may — within 30 days of receiving notification — submit observations if it disagrees with the rejection (payment review procedure).

If the rejection leads to a recovery, ASI will follow the contradictory procedure with pre-information letter set out in Article 21.

##### 26.3 Effects

If ASI rejects costs or contributions, it will deduct them from the costs or contributions declared and then calculate the amount due (and, if needed, make a recovery; see Article 21).

#### 

## Article 27. Grant reduction

##### 27.1 Conditions

ASI may — at subgrantee termination, final payment or afterwards — reduce the grant for a subgrantee, if the subgrantee (or a person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has committed:

1. substantial errors, irregularities or fraud or
2. serious breach of obligations under this Agreement or during its award (including improper implementation of the project, non-compliance with the call conditions, submission of false information, failure to provide required information, breach of ethics or security rules (if applicable), etc.)

The amount of the reduction will be calculated for each subgrantee concerned and proportionate to the seriousness and the duration of the errors, irregularities or fraud or breach of obligations, by applying an individual reduction rate to their accepted Financial support.

##### 27.2 Procedure

If the grant reduction does not lead to a recovery, ASI will formally notify the coordinator or subgrantee concerned of the reduction, the amount to be reduced and the reasons why. The coordinator or subgrantee concerned may — within 30 days of receiving notification — submit observations  if it disagrees with the reduction (payment review procedure).

If the grant reduction leads to a recovery, ASI will follow the contradictory procedure with pre-information letter set out in Article 21.

##### 27.3 Effects

If ASI reduces the grant, it will deduct the reduction and then calculate the amount due (and, if needed, make a recovery; see Article 21).

## SECTION 2 SUSPENSION AND TERMINATION

## Article 28. Payment deadline suspension

##### 28.1 Conditions

ASI may — at any moment — suspend the payment deadline if a payment cannot be processed because:

1. the required report (see Article 20) has not been submitted or is not complete or additional information is needed
2. there are doubts about the amount to be paid (e.g. ongoing extension procedure, queries about eligibility, need for a grant reduction, etc.) and additional checks, reviews, audits or investigations are necessary, or
3. there are other issues affecting ASI or the EU financial interests.

##### 28.2 Procedure

ASI will formally notify the coordinator of the suspension and the reasons why.

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

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

If the suspension exceeds two months, the coordinator may request ASI to confirm if the suspension will continue.

If the payment deadline has been suspended due to the non-compliance of the report and the revised report is not submitted (or was submitted but is also rejected), ASI may also terminate the grant or the participation of the coordinator (see Article 32).

## Article 29. Payment suspension

##### 29.1 Conditions

ASI may — at any moment — suspend payments, in whole or in partfor one or more beneficiaries, if a subgrantee (or a person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has committed or is suspected of having committed :

1. substantial errors, irregularities or fraud or
2. serious breach of obligations under this Agreement or during its award (including improper implementation of the project, non-compliance with the call conditions, submission of false information, failure to provide required information, breach of ethics or security rules (if applicable), etc.)

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

##### 29.2 Procedure

Before suspending payments, ASI will send a **pre-information letter** to the subgrantee concerned:

* formally notifying the intention to suspend payments and the reasons why and
* requesting observations within 30 days of receiving notification.

If ASI does not receive observations or decides to pursue the procedure despite the observations it has received, it will confirm the suspension (**confirmation letter**). Otherwise, it will formally notify that the procedure is discontinued.

At the end of the suspension procedure, ASI will also inform the coordinator.

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

If the conditions for resuming payments are met, the suspension will be **lifted**. ASI will formally notify the subgrantee concerned (and the coordinator) and set the suspension end date.

During the suspension, no prefinancing will be paid to the beneficiaries concerned. For interim payments, the periodic reports for all reporting periods except the last one (see Article 20) must not contain any financial statements from the subgrantee 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 project — in the last periodic report.

## Article 30. Grant suspension

##### 30.1 Sub-Grant suspension requested by subgrantee or consortium

**30.1.1 Conditions and procedure**

The beneficiaries may request the suspension of the grant or any part of it, if exceptional circumstances — in particular *force majeure* (see Article 34) — make implementation impossible or excessively difficult.

The coordinator must submit a request for **amendment** (see Article 39), with:

* the reasons why
* the date the suspension takes effect; this date may be before the date of the submission of the amendment request and
* the expected date of resumption.

The suspension will **take effect** on the day specified in the amendment.

Once circumstances allow for implementation to resume, the coordinator must immediately request another **amendment** of the Agreement to set the suspension end date, the resumption date (one day after suspension end date), extend the duration and make other changes necessary to adapt the project to the new situation (see Article 38) — unless the grant has been terminated (see Article 31). The suspension will be **lifted** with effect from the suspension end date set out in the amendment. This date may be before the date of the submission of the amendment request.

During the suspension, no prefinancing will be paid. Costs incurred or contributions for activities implemented during grant suspension are not eligible (see Article 6.3).

##### 30.2 Sub-Grant suspension initiated by ASI

**30.2.1** **Conditions**

ASI may suspend the grant or any part of it, if:

1. a subgrantee (or a person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has committed or is suspected of having committed:
2. substantial errors, irregularities or fraud or
3. serious breach of obligations under this Agreement or during its award (including improper implementation of the project, non-compliance with the call conditions, submission of false information, failure to provide required information, breach of ethics or security rules (if applicable), etc.)

**30.2.2 Procedure**

Before suspending the grant, ASI will send a **pre-information letter** to the subgrantee (mono-subgrantee) or coordinator (consortium):

* formally notifying the intention to suspend the grant and the reasons why and
* requesting observations within 30 days of receiving notification.

If ASI does not receive observations or decides to pursue the procedure despite the observations it has received, it will confirm the suspension (**confirmation letter**). Otherwise, it will formally notify that the procedure is discontinued.

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

Once the conditions for resuming implementation of the project are met, ASI will formally notify the coordinator a **lifting of suspension letter**, in which it will set the suspension end date and invite the coordinator to request an amendment of the Agreement to set the resumption date (one day after suspension end date), extend the duration and make other changes necessary to adapt the project to the new situation (see Article 38) — unless the grant has been terminated (see Article 32). The suspension will be **lifted** with effect from the suspension end date set out in the lifting of suspension letter. This date may be before the date on which the letter is sent.

During the suspension, no prefinancing will be paid. Costs incurred or contributions for activities implemented during suspension are not eligible (see Article 6.3).

The beneficiaries may not claim damages due to suspension by ASI (see Article 32).

Grant suspension does not affect ASI’sright to terminate the grant or a subgrantee (see Article 31) or reduce the grant (see Article 27).

## Article 31. Grant or subgrantee termination

##### 31.1 Sub-Grant termination requested by the subgrantee(s)

**31.1.1 Conditions and procedure**

The subgrantees may request the termination of the grant.

The subgrantee/coordinator must submit a request for **amendment** (see Article 39), with

* the reasons why
* the date the work on the project ends and
* the date the termination takes effect; this date must be after the date of the submission of the amendment request.

The termination will **take effect** on the termination date specified in the amendment.

If no reasons are given or if ASI considers the reasons do not justify termination, it may consider the grant terminated improperly.

**31.1.2 Effects**

The subgrantee/coordinator must — within 30 days from when termination takes effect — submit a **periodic report** (for the open reporting period until termination).

ASI will calculatethe final grant amount and final payment on the basis of the report submitted and taking into account the costs incurred and contributions for activities implemented before the end of work date (see Article 21). Costs relating to contracts due for execution only after the end of work are not eligible.

If ASI does not receive the report within the deadline, only costs and contributions which are included in an approved periodic report will be taken into account (no costs/contributions if no periodic report was ever approved)*.*

Improper termination may lead to a grant reduction (see Article 28).

After termination, the subgrantees’ obligations (in particular Articles 12 (confidentiality and security), 15 (IPR), 16 (communication, dissemination and visibility), 20 (reporting), 24 (checks, reviews, audits and investigations), 25 (impact evaluation), 26 (rejections), 27 (grant reduction) and 41 (assignment of claims)) continue to apply.

##### 31.2 Subgrantee termination requested by the consortium

**31.2.1 Conditions and procedure**

In case of implementation of the project by a consortium, the coordinator may request the termination of the participation of one or more subgrantees, on request of the subgrantee concerned or on behalf of the other subgrantees.

The coordinator must submit a request for **amendment** (see Article 38), with:

* the reasons why
* the opinion of the subgrantee concerned (or proof that this opinion has been requested in writing)
* the date the subgrantee ends work on the project (‘end of work date’)
* the date the termination takes effect (‘termination date’); this date must be after the date of the submission of the amendment request.

If the termination concerns the coordinator and is done without its agreement, the amendment request must be submitted by another subgrantee (acting on behalf of the consortium).

The termination will **take effect** on the termination date specified in the amendment.

If no information is given or if ASI considers that the reasons do not justify termination, it may consider the subgrantee to have been terminated improperly.

**31.2.2 Effects**

The coordinator must — within 30 days from when termination takes effect — submit:

1. a **report on the distribution of payments** to the subgrantee concerned
2. a **termination report** from the subgrantee concerned, for the open reporting period until termination, containing an overview of the progress of the work, the financial statement, the explanation on the use of resources, and, if applicable, the certificate on the financial statement (CFS; see Articles 20 and 24.1)
3. a second **request for amendment** (see Article 38) with other amendments needed (e.g. reallocation of the tasks and the estimated budget of the terminated subgrantee; addition of a new subgrantee to replace the terminated subgrantee; change of coordinator, etc.).

ASI will calculatethe amount due to the subgrantee on the basis of the report submitted and taking into account the costs incurred and contributions for activities implemented before the end of work date (see Article 21). Costs relating to contracts due for execution only after the end of work are not eligible.

The information in the termination report must also be included in the periodic report for the next reporting period (see Article 20).

If ASI does not receive the termination report within the deadline, only costs and contributions which are included in an approved periodic report will be taken into account (no costs/contributions if no periodic report was ever approved).

If ASI does not receive the report on the distribution of payments within the deadline, it will consider that:

* the coordinator did not distribute any payment to the subgrantee concerned and that
* the subgrantee concerned must not repay any amount to the coordinator.

If the second request for amendment is accepted by ASI, the Agreement is **amended** to introduce the necessary changes (see Article 38).

If the second request for amendment is rejected by ASI(because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the grant may be terminated (see Article 31).

Improper termination may lead to a reduction of the grant (see Article 31) or grant termination (see Article 31).

After termination, the subgrantees’ obligations (in particular Articles 12 (confidentiality and security), 15 (IPR), 16 (communication, dissemination and visibility), 20 (reporting), 24 (checks, reviews, audits and investigations), 25 (impact evaluation), 26 (rejections), 27 (grant reduction) and 41 (assignment of claims)) continue to apply.

##### 31.3 Sub-Grant or subgrantee termination initiated by ASI

**31.3.1 Conditions**

ASI may terminate the grant or the participation of one or more subgrantees, if:

1. **the technical requirements at the Critical Intermediate Reviews or the Pre-FAR Review are not met by the subgrantees and the achievement of the project as described in Annex 1 is considered compromised. In that case, and only at the stated Reviews (CIR, Pre-FAR)**, **the EUSST Partnership and the European Commission Delegates can decide against continuation of the project**
2. a change to the project or the legal, financial, technical, organisational or ownership situation of a subgrantee is likely to substantially affect the implementation of the project or calls into question the decision to award the grant (including changes linked to one of the exclusion grounds listed in the declaration of honour)
3. in case of implementation by a consortium, following termination of one or more subgrantees, the necessary changes to the Agreement (and their impact on the project) would call into question the decision awarding the grant or breach the principle of equal treatment of applicants
4. implementation of the project has become impossible or the changes necessary for its continuation would call into question the decision awarding the grant or breach the principle of equal treatment of applicants
5. **a subgrantee is no longer compliant with the condition for participation set out under Article 9**
6. a subgrantee (or person with unlimited liability for its debts) is subject to bankruptcy proceedings or similar (including insolvency, winding-up, administration by a liquidator or court, arrangement with creditors, suspension of business activities, etc.)
7. a subgrantee (or person with unlimited liability for its debts) is in breach of social security or tax obligations
8. a subgrantee (or person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has been found guilty of grave professional misconduct
9. a subgrantee (or person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has committed fraud, corruption, or is involved in a criminal organisation, money laundering, terrorism-related crimes (including terrorism financing), child labour or human trafficking
10. a subgrantee (or person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) was created under a different jurisdiction with the intent to circumvent fiscal, social or other legal obligations in the country of origin (or created another entity with this purpose)
11. a subgrantee (or person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has committed:
12. substantial errors, irregularities or fraud or
13. serious breach of obligations under this Agreement or during its award (including improper implementation of the project, non-compliance with the call conditions, submission of false information, failure to provide required information, breach of ethics or security rules (if applicable), etc.)
14. a subgrantee (or person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has committed — in other EU 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; see Article 24.5)

**31.3.2 Procedure**

Before terminating the grant or participation of one or more beneficiaries, ASI will send **a pre-information letter** to the coordinator or subgrantee concerned:

* formally notifying the intention to terminate and the reasons why and
* requesting observations within 30 days of receiving notification.

If ASI does not receive observations or decides to pursue the procedure despite the observations it has received, it will confirm the termination and the date it will take effect (**confirmation letter**). Otherwise, it will formally notify that the procedure is discontinued.

For subgrantee terminations, ASI will — at the end of the procedure — also inform the coordinator.

The termination will **take effect** the day after the confirmation notification is sent (or on a later date specified in the notification; ‘termination date’).

**31.3.3 Effects**

1. for **Agreement termination**:

The subgrantee/coordinator must — within 30 days from when termination takes effect — submit a **periodic report** (for the last open reporting period until termination).

ASI will calculate the final grant amount and final payment on the basis of the report submitted and taking into account the costs incurred and contributions for activities implemented before termination takes effect (see Article 22). Costs relating to contracts due for execution only after termination are not eligible.

If the grant is terminated for breach of the obligation to submit reports, the coordinator may not submit any report after termination.

If ASI does not receive the report within the deadline, only costs and contributions which are included in an approved periodic report will be taken into account (no costs/contributions if no periodic report was ever approved).

Termination does not affect ASI’s right to reduce the grant (see Article 28) or to impose administrative sanctions (see Article 34).

The subgrantees may not claim damages due to termination by ASI (see Article 33).

After termination, the subgrantees’ obligations (in particular Articles 12 (confidentiality and security), 15 (IPR), 16 (communication, dissemination and visibility), 20 (reporting), 24 (checks, reviews, audits and investigations), 25 (impact evaluation), 26 (rejections), 27 (grant reduction) and 41 (assignment of claims)) continue to apply.

1. for **subgrantee termination**:

The subgrantee/coordinator must — within 30 days from when termination takes effect — submit:

1. a **report on the distribution of payments** to the subgrantee concerned
2. a **termination report** from the subgrantee concerned, for the open reporting period until termination, containing an overview of the progress of the work, the financial statement, the explanation on the use of resources, and, if applicable, the certificate on the financial statement
3. a **request for amendment** (see Article 38) with any amendments needed (e.g. reallocation of the tasks and the estimated budget of the terminated subgrantee; addition of a new subgrantee to replace the terminated subgrantee; change of coordinator, etc.).

ASI will calculatethe amount due to the subgrantee on the basis of the report submitted and taking into account the costs incurred and contributions for activities implementedbefore termination takes effect (see Article 21). Costs relating to contracts due for execution only after termination are not eligible.

The information in the termination report must also be included in the periodic report for the next reporting period (see Article 20).

If ASI does not receive the termination report within the deadline, only costs and contributions included in an approved periodic report will be taken into account (no costs/contributions if no periodic report was ever approved).

If ASI does not receive the report on the distribution of payments within the deadline, it will consider that:

* the coordinator did not distribute any payment to the subgrantee concerned and that
* the subgrantee concerned must not repay any amount to the coordinator.

If the request for amendment is accepted by ASI, the Agreement is **amended** to introduce the necessary changes (see Article 38).

If the request for amendment is rejected by ASI (because it calls into question the decision awarding the grant or breaches the principle of equal treatment of applicants), the grant may be terminated (see Article 31).

After termination, the subgrantees’ obligations (in particular Articles 12 (confidentiality and security), 15 (IPR), 16 (communication, dissemination and visibility), 20 (reporting), 24 (checks, reviews, audits and investigations), 25 (impact evaluation), 26 (rejections), 27 (grant reduction) and 41 (assignment of claims)) continue to apply.

## SECTION 3 OTHER CONSEQUENCES

## Article 32. Damages

##### 32.1 Liability of ASI

ASI cannot be held liable for any damage caused to the subgrantee(s) or to third parties as a consequence of the implementation of the Agreement, including for gross negligence.

ASI cannot be held liable for any damage caused by any of the subgrantee(s) or other participants involved in the project, as a consequence of the implementation of the Agreement.

##### 32.2 Liability of the subgrantees

The subgrantees must compensate ASI for any damage it sustains as a result of the implementation of the project or because the project was not implemented in full compliance with the Agreement, provided that it was caused by gross negligence or wilful act.

The liability does not extend to indirect or consequential losses or similar damage (such as loss of profit, loss of revenue or loss of contracts), provided such damage was not caused by wilful act or by a breach of confidentiality.

#### **Article 33. Administrative sanctions and other matters**

Nothing in this Agreement may be construed as preventing the adoption of administrative sanctions or other public law measures, in addition or as an alternative to the contractual measures provided under this Agreement.

## SECTION 4 FORCE MAJEURE

## Article 34. Force majeure

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

‘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 other participants involved in the project), and
* proves to be inevitable in spite of exercising all due diligence.

Any situation constituting force majeure must be formally notified to the other partywithout 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 toresume implementation of the project as soon as possible.

# CHAPTER 6 FINAL PROVISIONS

## Article 35. Agreement for access to data

The subgrantees commit to give **access to the data produced by the new sensor or upgraded sensor** to ASI or other EUSST entities at a preferential price conditions during a certain period to be defined. The preferential price will consider the market price conditions at the time of the contract signature.

To that effect the subgrantees will be invited to enter into an agreement with ASI regarding a **preferential fee for data** to be provided in the frame of future Tenders for the procurement of commercial data of the EUSST Partnership. This agreement will be based upon the provisions of the Model data provision agreement in Annex 6 and be concluded before the final payment of this grant.

## Article 36. Communication between the parties

Communications must be made in writing (electronically) and clearly identify the sub-grant agreement (project number and acronym).

- Contact details/persons ASI:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contractor** | **Name** | **Fonction** | **Email/Telephone** | **Adress** |
| ASI |  | Technical |  |  |
| ASI |  | Administrative/legal |  |  |
| ASI |  |  |  |  |

- Contact details/persons Subgrantee(s):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Subgrantee** | **Name** | **Fonction** | **Email/Telephone** | **Adress** |
|  |  | Technical |  |  |
|  |  | Administrative/legal |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

## Article 37. Calculation of periods and deadlines

In accordance with Regulation No 1182/71[[10]](#footnote-11),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.

‘Days’ means calendar days, not working days.

## Article 38. Amendments

##### 38.1 Conditions

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

Amendments may be requested by any of the parties.

##### 38.2 Procedure

The party requesting an amendment mustsubmita request for amendment signed directly in the Portal Amendment tool/or via email- certified email.

The coordinator submits and receives requests for amendment on behalf of the beneficiaries . If a change of coordinator is requested without its agreement, the submission must be done by another subgrantee (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).

ASI may request additional information.

If the party receiving the request agrees, it must sign the amendment in the tool within 45 days of receiving notification (or any additional information ASI 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 of entry into force or other date specified in the amendment.

## Article 39. Addition of new subgrantee(s)

In justified cases, the subgrantees may request the addition of a new subgrantee.

For this purpose, the coordinator must submit a request for amendment in accordance with Article 38.

New subgrantees will assume the rights and obligations under the Agreement with effect from the date the amendment regarding their addition to the Parties enters into force.

Additions are also possible in mono-subgrantee grants.

## Article 40. Transfer of the agreement

In justified cases, the subgrantee of a mono-subgrantee grant may request the transfer of the grant to a new subgrantee, provided that this would not call into question the decision awarding the grant or breach the principle of equal treatment of applicants.

The subgrantee must submit a request for **amendment** (see Article 38), with:

* the reasons why
* additional supporting documents (if required by ASI).

The new subgrantee will assume the rights and obligations under the Agreement with effect from the date the amendment regarding the transfer of the grant enters into force.

## Article 41. Assignments of claims for payment against ASI

The subgrantees may not assign any of their claims for payment against ASI to any third party, except if expressly approved in writing by ASI on the basis of a reasoned, written request by the coordinator (on behalf of the subgrantee concerned).

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

In no circumstances will an assignment release the subgrantees from their obligations towards ASI.

## Article 42. Applicable law and settlement of disputes

##### 42.1 Applicable law

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

##### 42.2 Dispute settlement

If a dispute concerns the interpretation, application or validity of the Agreement, the parties will endeavor to reach an amicable settlement.

In the absence of amicable settlement, any dispute arising during the interpretation or the application of the Agreement will be subject to the competent courts of Rome.

## Article 43. Entry into force

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

SIGNATURES

For coordinator [Name] For Subgrantee [Name]

[function/forename/surname] [forename/surname]

[electronic signature] [electronic signature]

Done in [English] Done in [English]

on [electronic time stamp] on [electronic time stamp]

e

For ASI For Subgrantee [Name]

[function/forename/surname] [forename/surname]

[electronic signature] [electronic signature]

Done in [English] Done in [English]

on [electronic time stamp] on [electronic time stamp]

1. Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29). [↑](#footnote-ref-2)
2. OJ C 316, 27.11.1995, p. 48. [↑](#footnote-ref-3)
3. Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1). [↑](#footnote-ref-4)
4. See Article 125 EU Financial Regulation 2018/1046. [↑](#footnote-ref-5)
5. Commission Decision 2015/444/EC, Euratom of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53). [↑](#footnote-ref-6)
6. Regulation (EU) 2016/679 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, and repealing Directive 95/46/EC (‘GDPR’) (OJ L 119, 4.5.2016, p. 1). [↑](#footnote-ref-7)
7. 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). [↑](#footnote-ref-8)
8. 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). [↑](#footnote-ref-9)
9. Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15/11/1996, p. 2). [↑](#footnote-ref-10)
10. 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). [↑](#footnote-ref-11)