



## Draft Hosting Agreement

No [xxx]

*Hosting Consortium  
for the Chips JU Design Platform*



The present Hosting Agreement is concluded between the following Parties:

**The Chips Joint Undertaking (hereinafter “the Chips JU”)**, represented for the purposes of signature of this agreement by its Executive Director, Jari Kinaret, on the one part, and

the **Hosting Consortium** consisting of [*Insert members of the consortium*],  
represented by [*coordinator*]

duly represented for the signature of this agreement by

[*legal representative*], on the other part,

Hereinafter referred jointly as “the parties”

***HAVE AGREED***

to the **terms and conditions** set out below and the following annexes:

**Annex I. Service Level Agreement (SLA) - Required Hosting Activities**

**Annex II. Description of Action (*Application: xxxx*) (Confidential)**

**Annex III. Summary table of financing of the Design Platform (Confidential)**

**Annex IV. Key Performance Indicators (KPIs)**

which form an integral part of the present Hosting Agreement (hereinafter referred to as “Agreement”).



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## General Framework

The (hereinafter also referred as "the Chips JU") is established by Council Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe (hereinafter "SBA") and modified by its amendment, Council Regulation (EU) 2023/1782 of 25 July 2023 (hereinafter "SBA Amendment"). Furthermore, the Chips JU is tasked to implement the main part of the Chips for Europe Initiative (established under Regulation (EU) 2023/1781 of 13 September 2023 (hereinafter "Chips Act")).

Article 3 of the Chips Act establishes the Chips for Europe Initiative (hereinafter "the Initiative"). Articles 4 and 5 of the Chips Act define the different operational components of the Initiative. Under operational objective 1, the Initiative will build up and maintain a virtual design platform, available across the Union, integrating existing and new design facilities with extended libraries and electronic design automation (EDA) tools. In accordance with Article 12(1) of the Chips Act, the Chips JU will implement, amongst other, operational objective 1. The Union contribution to the Design Platform will stem from the budget of the Digital Europe Programme<sup>1</sup>.

Following the Chips JU work programme's part for 2024<sup>2</sup>, the Chips JU has launched a Call for Design Platform (CDP)<sup>3</sup>. This Call for Design Platform included two interrelated calls:

- Call for Expression of Interest for the selection of a Hosting Consortium (hereinafter 'Hosting Consortium');
- Call for proposals for coordination of the Design Platform (Coordination and Support Action, CSA);

In accordance with the criteria referred to in the CDP, the Public Authorities Board<sup>4</sup> (PAB) has selected the [reference of the Design Platform application] represented by the Coordinator referred to above.

The selection of an application to the Call for Expression of Interest for the selection of a Hosting Consortium in the CDP leads to the signature of the present Agreement.

The purpose of this Agreement is to lay down the terms and conditions under which the Hosting Consortium, represented by the Coordinator, will host the Design Platform's virtual infrastructure and central services, as procured by the Chips JU through a dedicated Call for Tenders, in the name and on behalf of the Chips JU. This includes the overall coordination of the Design Platform, including coordinating access to a wide range of tools, assets and services; further development and operationalisation of the Design Platform; and associated services for the fulfilment and implementation of the Chips JU's tasks and activities, as defined in the SBA and SBA Amendment.

## CHAPTER 1

### Article 1 - Subject matter

1. The subject matter of the Agreement is to define the roles and responsibilities between the Chips JU and the Hosting Consortium regarding the hosting activities to coordinate the Design Platform,

<sup>1</sup> Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (Text with EEA relevance)

<sup>2</sup> Chips JU GB decision 2023.58

<sup>3</sup> Chips JU PAB decision []

<sup>4</sup> Chips JU PAB decision []



which are entrusted by the Chips JU (being owner of the cloud service) and define the relevant terms and conditions for the long-term collaboration between the Hosting Consortium and the Chips JU.

2. The Hosting Consortium will execute the tasks assigned to it in accordance with the Agreement, its Annexes and the grant agreement to be signed for coordination and support costs of the Design Platform.
3. The current Agreement shall be legally binding on all the members of the Hosting Consortium, which shall be represented by the Coordinator.
4. The members of the Hosting Consortium shall adopt their own internal arrangements (Consortium agreement) in order to properly implement the Design Platform. These internal arrangements shall also cover liability.

### *Article 2 - Definitions*

1. For the purposes of this Agreement the following definitions apply:
  - a) “Access conditions” means the conditions under which a User or group of Users may access the Design Platform in order to use the platform.
  - b) "Acceptance test" means a test conducted to determine if the requirements of the specification of the Design Platform cloud service or part thereof are met.
  - c) “Call for Expression of Interest (CfEoI)” means the procedure followed to select the Hosting Consortium for the Design Platform.
  - d) “Confidential information or document” means any information or document received by either Party from the other or accessed by either Party in the context of the performance of the Agreement that any of the Parties has identified in writing as confidential. It may not include information that is publicly available.
  - e) “Conflict of interest” means a situation where the impartial and objective implementation of the agreement by the Hosting Consortium is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other direct or indirect personal interest.
  - f) “Design Platform” means a cloud-enabled platform that aids users, particularly start-ups and SMEs, in accessing a wide range of advanced tools, assets and services to develop their chips; and that supports these users along the innovation process, in preparation for industrial deployment, facilitating increased opportunities for innovation across the industry by lowering the barrier of entry for chip design in Europe and enabling both small and large entities to drive technological progress, thereby strengthening EU’s position in the global semiconductor market. It encompasses a combination of a cloud-based infrastructure together with a number of dedicated design assets and other relevant services and activities.
  - g) “Force majeure” means any unforeseeable, exceptional situation or event beyond the control of the Parties that prevents either of them from fulfilling any of their obligations under the Agreement which is not attributable to error or negligence on their part or on the part of the subcontractors’ affiliated entities or third parties in receipt of financial support and which proves



to be inevitable despite their exercising due diligence. Such force majeure events can include, if not proven otherwise, inter alia, terrorist attacks, war or insurrection, natural catastrophes, interruptions in general traffic or data communication. The situation or event must not be attributable to error or negligence on the part of the Parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure as set out above.

- h) “Formal notification” means a form of communication between the Parties made in writing by mail or email, which provides the sender with concrete evidence that the message was delivered to the specified recipient.
- i) “Fraud” within the meaning of Article 3 of EU Directive 2017/1371<sup>12</sup> 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<sup>13</sup>. Fraud is also any other wrongful or criminal deception intended to result in financial or personal gain;
- j) “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;
- k) “Hosting Consortium” means a consortium composed of the following members: [members of the consortium], and one of these members, [name of coordinator], is the Coordinator. The Hosting Consortium “hosts” the Design Platform by providing coordination and support services.
- l) “IT infrastructure” means the cloud services as set out in Annex B of this call for Design Platform and the templates of virtual machines or containers containing all the software components and configuration required to operate a given electronic design software, and that can be easily deployed on the cloud instances operated by the Design Implementation Teams (DET). The latter shall be complemented by the development of an Infrastructure as Code (IaC) framework that supports a variety of cloud vendors.
- m) “Irregularity” means 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<sup>14</sup>;
- n) “Rules Applicable to the Chips JU” include the SBA, the SBA Amendment, the Chips Act, Horizon Europe, the Digital Europe Programme, the Financial Regulation, the Model Financial Regulation, the financial rules of the Chips JU and any other legislative or non-legislative act that may be applicable to the Chips JU.
- o) “Services of the Design Platform” means two classes of services to be provided by the Hosting Consortium as defined in section 2.4.5.1. of the CDP – Services:
  - i. Level 1 services means the base level of services open to a wide range of users that fulfil the access conditions set out in article 19 of this agreement and section 2.4.5.2 of the CDP.
  - ii. Level 2 services means services primarily targeted towards selected start-ups and SMEs receiving support from public authorities that fulfil the access conditions set out in article



19 of this agreement and section 2.4.5.2 of the CDP.

- p) “Subcontract” means a contract which covers the implementation by a third party of tasks forming part of the Agreement;
- q) “Substantial Error” means any infringement of a provision of the Agreement resulting from an act or omission, which causes or might cause a loss to the Union’s financial contribution to the Chips JU or damage the Union’s or the JU’s financial interests;
- r) "User" or "Users" means any natural or legal person, entity or international organisation that makes use of the Design Platform services;
- s) "Contractor" refers to the legal person(s) with whom the Chips JU, after a call for tenders launched solely by the Chips JU has an agreement for the design, deployment and maintenance of a cloud service;

## CHAPTER 2

### *Article 3 - General Obligations of the Hosting Consortium*

1. The Hosting Consortium, represented by the Coordinator, shall execute the Agreement to the highest professional standards respecting deadlines mutually agreed by the Parties.
2. The Coordinator shall ensure that all obligations applicable to the members of the Hosting Consortium in the context of the present Agreement are fulfilled in due time and to the highest standards.
3. All activities and services shall be carried out by the Hosting Consortium in compliance with the applicable health and safety laws and regulations.
4. The Hosting Consortium shall ensure that the personnel performing the Agreement possesses the professional qualifications and experience required for the execution of the tasks assigned to it. The Hosting Consortium will be solely responsible for the personnel who executes the tasks assigned to it.
5. The Hosting Consortium shall:
  - a) ensure the proper operation of the Design Platform within the scope of its responsibilities (as listed in paragraph 6.) to enable Users to access the services defined in Annex II for the duration of this Agreement, which shall, in collaboration with the designated system integrator following a call for tenders by the Chips JU, include maintenance of hardware and software, including updates,
  - b) ensure the security and cyber-security of the Design Platform, and the IT Infrastructure,
  - c) report to the Chips JU through periodic meetings and the submission of documents,
  - d) ensure access to the Design Platform in accordance with Article 19 of this Agreement,
  - e) together with the contractor, ensure that any third-party Intellectual Property (‘IP’) hosted on the cloud service is disseminated and used in line with the conditions set out by the relevant owner or distributor of said IP,
  - f) inform the Chips JU and Users without delay about the incidents impacting the use of the Design



Platform,

- g) provide any information to the Chips JU that is relevant for the Chips JU to perform its duties under the present Agreement and the Rules Applicable to the Chips JU,
  - h) allow staff members of the Chips JU to access the IT infrastructure to verify information that may be deemed relevant to perform the Chips JU's duties under the present Agreement and the Rules Applicable to the Chips JU,
  - i) fulfil its financial obligations as defined in this Agreement, the Rules Applicable to the Chips JU, and the relevant grant agreement(s).
6. The Hosting Consortium shall ensure the functioning of the Design Platform, in collaboration with the contractor and under the supervision of the Chips JU. As long as the members of the Hosting Consortium do not incur in fraud, bad faith, wilful default, recklessness or negligence, they will not be liable for incidents or damage attributable to:
- a) failures or faults in software components that are not under the responsibility of the Contractor,
  - b) misuse of the Design Platform by Users, including IP misuse,
  - c) negligence or failure of Users to follow the instructions for use of the Design Platform or software or breach of the end user license terms, or
  - d) Force majeure events in accordance with Article 30.

In all cases, including the above, the Hosting Consortium shall inform the Chips JU without delay, liaise with the designated Contractor(s) and shall take without delay all appropriate measures to restore the functioning of the Design Platform to minimise costs and prevent financial loss or damage to the Chips JU and to the Design Platform.

7. In relation to the action funded under the grant agreement, the rules laid down in the relevant grant agreement shall apply.

#### ***Article 4 - General Obligations of the Chips JU***

1. The Chips JU shall:
- a) Fulfil its financial obligations as defined in this Agreement.
  - b) Be the sole owner of the Design Platform cloud services and the sole contracting authority with the Contractor for the acquisition and maintenance of the Design Platform cloud services.
  - c) Provide any information to the Hosting Consortium that is relevant for the latter to perform its duties under the Rules Applicable to the Chips JU and the Agreement within the deadlines agreed by the Parties.

#### ***Article 5 - Obligations of the Parties during the acquisition procedure***

- 1. The Chips JU, supported by the Hosting Entity Consortium, will launch the process for the acquisition of the Design Platform cloud services in accordance with the financial rules of the Chips JU.
- 2. Throughout the acquisition process of the Design Platform, including the preparatory phase, the Parties will work together in a spirit of collaboration for achieving the objective of acquiring the Design Platform.



3. For that purpose, the Parties will have the following responsibilities:
  - a) The Hosting Consortium shall oversee that the cloud service procured by the Chips JU is secure, scalable, and accessible 24/7. The service shall include the provision of a user help desk support, robust security measures, data backup and recovery, and regular maintenance and updates.
  - b) The Hosting Consortium will identify and implement the hosting requirements, including but not limited to the IT infrastructure, security rules and site regulation, for the proper operation of the Design Platform. The Hosting Entity will provide to the Chips JU:
    - i. Evidence of successful testing of all requirements defined in the tender for the procurement of the cloud service to be launched by the Chips JU;
    - ii. Demonstration of resilience of systems and components.
4. The Chips JU or any mandated entity of the Chips JU will have the right to inspect data centre, documentation, certifications and test reports, where relevant, in order to sign off acceptance of the relevant milestones, laid down in the corresponding CSA grant agreement.

#### ***Article 6 - Obligations of the Parties during the performance of the Agreement***

1. Unless otherwise indicated, the relevant Hosting Consortium will be mandated to act in the name and on behalf of the Chips JU for the coordination of the Design Platform hosted by the Hosting Consortium. For the purpose of these technical operations, the Hosting Consortium will be the single point of contact of the Contractor(s) in the framework of the procurement contract to be signed between the Chips JU and the Contractor(s).

#### ***Article 7 - Delivery and installation of the Cloud Service for the Design Platform***

1. The Hosting Consortium shall monitor and supervise the proper delivery of the Design Platform services by the Contractor and/or in cooperation with the Contractor.
2. The relevant Hosting Consortium shall provide a report to the Chips JU in that regard and will respond to any questions relevant to the delivery of the Design Platform in a timely manner.
3. The relevant Hosting Consortium shall collaborate with the Contractor to make sure that the development and installation of the IT infrastructure of the Design Platform is done in time and according to the specified requirements of the procurement contract signed with the Contractor.
4. The relevant Hosting Consortium shall supervise, monitor and check the compliance of the cloud services provided by the Contractor with the requirements of the procurement contract with the Contractor referred to in paragraph 3.

#### ***Article 8 - Acceptance of the cloud Service for the Design Platform***

1. The Hosting Consortium shall check the compliance of the Design Platform cloud service provided by the Contractor with the requirements of the procurement contract with the Vendor and shall perform the Acceptance test of the Design Platform in that regard.
2. The Hosting Consortium shall perform the acceptance in accordance with the testing procedure which shall be jointly agreed between the relevant Hosting Consortium and the Chips JU and defined in the procurement contract with the Vendor. The Hosting Consortium shall oversee that the cloud service procured by the Chips JU is secure, scalable, and accessible 24/7. The service



shall include the provision of a user help desk support, robust security measures, data backup and recovery, and regular maintenance and updates.

3. The Hosting Consortium will inform the Chips JU on the outcome of the acceptance accordingly. In case of non-compliance, the relevant Hosting Entity shall have the primary role in interacting with the Vendor to choose the most appropriate solution to be implemented, in consultation with the Chips JU, while keeping the latter informed throughout the process.

#### ***Article 9 - Operations***

1. The Hosting Consortium must provide the hosting services defined in Required Hosting Activities in Annex I Service Level Agreement (SLA) and shall be responsible for the coordination of the Design Platform in accordance with the grant agreement.
2. The Hosting Consortium must provide the Chips JU regular service, utilisation and performance reports as be mutually agreed upon. The Hosting Consortium must implement the allocation of usage of the Design Platform in accordance with article 19 of this Agreement.
3. The Hosting Consortium must meet the KPIs defined in Annex IV Key Performance Indicators (KPIs).

#### ***Article 10 - End of the operations of the Design Platform***

1. At the earliest [x] years after the successful acceptance test by the Chips JU of the Design Platform cloud service, the Chips JU, upon mutual agreement of the parties and subject to decision of the Public Authorities Board may decide to transfer the ownership of the Design platform cloud service to the Hosting Consortium or another entity or sell it to another entity or decommission it.
2. If the Chips JU, with the agreement of the Hosting Consortium, decides to transfer the ownership of the Design Platform cloud service at the end of its operation, the associated costs will be calculated at that moment in accordance with standard accounting practices for such assets in force at that time.
3. In the case of transfer of ownership to the Hosting Consortium in accordance with paragraph 1, the Hosting Consortium will reimburse the Chips JU the residual value of the Design Platform cloud service that is transferred.
4. The Chips JU will not be liable for any costs incurred after the transfer of ownership of the Design Platform cloud service or after its sale to the Hosting Consortium or another entity.

#### ***Article 11 - Conflict of Interest***

1. The Hosting Consortium must take reasonable measures to prevent any situation where the impartial and objective implementation of the tasks is compromised for reasons involving economic interest, political or national affinity, family or emotional life or any other direct or indirect personal interest ("Conflict of interest").
2. The Hosting Consortium must formally notify to the Chips JU without delay any situation constituting or likely to lead to a Conflict of interest and immediately take all the necessary steps to rectify this situation.



3. The Hosting Consortium shall pass on all the relevant obligations on Conflict of interest in writing to:
  - the personnel of its members;
  - any natural person with the power to represent it or take decisions on its behalf;
  - third parties involved in the performance of the agreement including subcontractors.
4. The Hosting Consortium must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.
5. The Chips JU may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.
6. In relation to the action funded under grant agreements, the conflict-of-interest rules in those grant agreements will apply.

#### ***Article 12 - Confidentiality obligation and non-disclosure***

1. The Chips JU and the Hosting Consortium undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the Agreement that is duly classified as confidential.
2. The Parties will not use confidential information and documents for any reason other than fulfilling the obligations under the Agreement or the grant agreement, unless otherwise foreseen in writing.
3. A receiving Party will notify the disclosing Party if it is legally required to disclose any confidential information or learns of any unauthorized disclosure of confidential information.
4. The Parties will be bound by the obligation referred to in the above paragraphs during the whole implementation of the Agreement Chips JU and for a period of five (5) years starting from the date of the termination of this Agreement, unless:
  - a) the concerned Party agrees to release the other Party from the confidentiality obligations earlier;
  - b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;
  - c) the disclosure of the confidential information is required by law, regulation or binding order of competent authorities.
5. In relation to the action funded under the relevant grant agreement(s), the confidentiality rules in the grant agreement(s) will apply.

#### ***Article 13 - Processing of personal data by the Chips JU***

1. The Chips JU will process any personal data under the Agreement in accordance with Regulation (EU) 2018/1725.<sup>5</sup>
2. Where the Chips JU is the data controller under Regulation (EU) 2018/1725, such data will be processed by the 'data controller' solely for the purposes of the implementation, management and

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<sup>5</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002, OJ L 295, 21.11.2018, p. 39–98.



monitoring of the Agreement or to protect the Union's or the Joint Undertaking's financial interests, including checks, audits and investigations, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of the applicable rules.

3. The persons whose personal data are processed have the right to access, rectify or erase their own personal data and the right to restrict or, where applicable, the right to data portability or the right to object to data processing in accordance with Regulation (EU) No 2018/1725. For this purpose, they must send any queries about the processing of its personal data to the data controller, via the contact point indicated in the privacy statement(s) that are published on the JU website.
4. The persons whose personal data are processed may have recourse at any time to the European Data Protection Supervisor.

#### ***Article 14 - Processing of personal data by the Hosting Consortium***

1. The Hosting Consortium must process personal data under the Agreement in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).
2. The Hosting Consortium may grant its personnel (i.e., the personnel of the members of the Hosting Consortium) access only to data that is strictly necessary for implementing, managing and monitoring the Agreement. The Hosting Consortium must ensure that the personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality.
3. The Hosting Consortium must adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing of the personal data concerned. This is in order to ensure, as appropriate:
  - a) the pseudonymisation and encryption of personal data;
  - b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
  - d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
  - e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.
4. In relation to the action funded under the relevant grant agreement(s), the data protection rules in the grant agreement(s) will apply.

#### ***Article 15 - Visibility of Union funding – Obligation and right to use the Chips JU logo and the EU emblem***

1. Unless the Chips JU requests or agrees otherwise, any communication or publication made by the Hosting Consortium that relates to the Design Platform, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, in electronic form, etc.), must:
  - a. display the Chips JU's logo,



- b. display the EU emblem, and
  - c. include the following text: “The build-up and coordination of the Design Platform is funded by the Chips JU, through the European Union’s Digital Europe programme.
2. Unless the Chips JU requests or agrees otherwise, the cloud service procured by the Chips JU and under coordination of the Hosting Consortium must display the Chips JU’s logo and the EU emblem.
3. When displayed together with another logo, the Chips JU logo and the EU emblem must have appropriate prominence.
4. The obligation to display the Chips JU logo and the European Union emblem does not confer to the Hosting Consortium a right of exclusive use. The Hosting Consortium may not appropriate the Chips JU logo and the EU emblem or any similar trademark or logo, either by registration or by any other means.
5. For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the Hosting Consortium may use the Chips JU logo and the EU emblem without first obtaining permission from the Chips JU or the Commission.
6. In relation to the action funded under the grant agreement, the visibility rules in the grant agreement will apply.

#### *Article 16 - Disclaimer*

1. Any communication or publication that relates to the Design Platform, made by the Hosting Consortium in any form and using any means, must indicate:
  - a) that it reflects only the author’s view; and
  - b) that the Chips JU is not responsible for any use that may be made of the information it contains.

#### *Article 17 - Visibility of consortium members*

1. Unless the Parties agree otherwise, any communication or publication made by the Chips JU that relates to the Design Platform, shall together with the Chips JU logo and the EU emblem, display the logo of the members of the Hosting Consortium.
2. For the purposes of the paragraph 1 and under the conditions specified therein, the Chips JU may use the logo of the members of the Hosting Consortium without first obtaining their permission.

#### *Article 18 - Security*

1. The Hosting Consortium shall provide access to the Design Platform for the purposes stipulated in this Agreement, while ensuring the security of the Design Platform.

The Hosting Consortium must adopt appropriate technical and organisational security measures having regard to the risks inherent to the hosting and coordination of the Design Platform.

**Article 19 - Access to the Design Platform**

1. Access conditions shall be in line with the legal framework described in Article 128(5) of the SBA and Articles 13(4) and 14(5) of the Chips Act, with the relevant work programme, and the CDP as well as with the legal framework and requirements of the Hosting Consortium as long as they are not in contradiction with the abovementioned legal provisions, work programme and CDP.
2. Specifically, the terms governing the Access conditions to the Design Platform shall be specified in accordance with the following parameters:
  - a) Access should be made available to a wide range of users across the Union as per specific conditions set-out below;
  - b) Access should be granted on a transparent basis, i.e. information regarding the criteria, processes, and terms governing access to the infrastructures should be clear and transparent to ensure that potential users have a comprehensive understanding of the access framework;
  - c) Access should be granted on a non-discriminatory basis, i.e. preferential treatment of potential users based on their geographic location in the Union, affiliation, etc. should be avoided;
  - d) Access needs to be provided on transparent market terms, or on a cost-plus-reasonable-margin basis for large undertakings, while granting preferential access or reduced prices for academic institutions, start-ups and SMEs. In case of reduced prices, price differences must be monitored by the Hosting Consortium;
  - e) Access should be granted to international research and commercial partners, if this is foreseen in Digital Partnerships and Trade and Technology Councils of the Union as part of its agreement with its international strategic partners. In case of excessive demand for access to an infrastructure, the Hosting Consortium needs to put in place mechanisms to ensure fairness, transparency, and equal opportunity for all interested parties;
3. Access to the Design Platform should be based on fair and non-discriminatory principles and should be limited to Participating States of the Chips JU, meaning EU Member States, EEA countries and those countries that have been associated to Horizon Europe or Digital Europe Strategic Objective 6, under which the design platform is funded. In determining access to the Design Platform for users established in any Participating State but controlled from third countries that are not Participating States of the Chips JU, consortia must take into consideration the following two main criteria:
  - i) The EU added value, i.e., their contribution to the objectives of the Chips Act as set out in Article 4; and
  - j) Economic security considerations.
4. The above access criteria should also be duly considering other relevant provisions of the Chips Act (notably Recital 11, and Recital 27), such as for example those in relation to the handling of sensitive information, potential risks of infringement of IP rights, unauthorised disclosure of trade secrets and IP rights, security, confidentiality, or the leakage of sensitive emerging technologies within the semiconductor sector.
5. Only users from organisations that can clearly demonstrate their contribution to EU added value, their alignment with European economic security shall be granted access. Users from third countries will be granted access when this is foreseen in the international obligations of the Union concerning semiconductors, as these defined in any relevant Digital Partnerships or Trade and Technology Council agreements. In this case, such users should still commit to fulfil the above access criteria.
6. The Hosting Consortium shall further elaborate on the above access criteria as well as access conditions and widely publish them. Such access conditions shall duly take into consideration the following elements: security procedures (both for physical and digital), cybersecurity protection of digital systems used to operate the Design Platform, access control to facility and digital systems



(including logging of access), security clearance, setup of different restricted areas with different security levels (such as the compartmentalisation of both digital and physical infrastructures).

7. Furthermore, specifically when it comes to Level 1 services, these services should be open to all users in the EU who satisfy some basic eligibility criteria to be proposed by the Hosting Consortium. Level 1 services should be accessible to all legal entities from Chips JU Participating States against market terms with highly reduced or zero prices and preferential access for start-ups and SMEs. For those legal entities established in Participating States but controlled from third countries, the access conditions are subject to the conditions described above in paragraph 3.
8. Furthermore, specifically when it comes to Level 2 services:
  - a) In addition to access to Level 2 services via potential financial support from the Union and Participating States, companies may get access to these services via market prices. Such access follows the general principles set out above. Access for legal entities established in Participating States but controlled from third countries shall be determined based on EU added value and economic security terms as described above.
  - b) Companies could potentially get access to Level 2 services via potential financial support from the Union and Participating States. Any potential competitive funding scheme shall include EU added value and economic security considerations as an evaluation criterion and should be subject to a decision from the Public Authorities Board.
9. The Access conditions will be those defined in Annex II. Description of Action to this Agreement.

#### ***Article 20 - Accounting of Access and resource usage***

1. The Hosting Consortium must ensure that the access and resource usage is registered in a traceable and auditable way and provides an appropriate overview of the system utilisation. The Hosting Consortium must provide regular information of access allocation and usage as part of the reports indicated in Annex II.
2. The Chips JU has the right to audit the allocation and usage of the Design Platform resources in accordance with Article 21.

#### ***Article 21 - Checks and Audits***

1. The Chips JU may, during the implementation of the Agreement or afterwards, carry out technical and financial checks and audits to determine that the Hosting Consortium is implementing the Agreement properly and is complying with the obligations under the Agreement, including assessing deliverables and reports. For that purpose, the Hosting Consortium must provide any information, including information in electronic format, requested by the Chips JU or by any other outside body authorised by the Chips JU. Information provided must be accurate, precise and complete and in the format requested, including electronic format.
2. The specific terms and conditions including audit regarding the coordination and support costs of the Design Platform from Union financial contribution will be defined in the relevant grant agreement to be signed between the Parties for that purpose on the basis of the applicable legal framework.
3. The Hosting Consortium must also put in place an audit procedure covering the access of the Users managed by Chips JU in accordance with the Rules Applicable to the Chips JU and, in particular, this Agreement. The audit procedure must address but not be limited to information



on all User access and User identification.

4. The Hosting Consortium must submit each year, on time for its inclusion in that year's annual activity report, to the Chips JU's Governing Board a report and data on the access to the Design Platform in the previous financial year (Annex II).
5. The checks and audit data must be protected, non-repudiated and restricted to authorized staff. Retention of the relevant records will be retained online for at least ninety (90) days and further preserved offline for the period of the Agreement or as required by the Chips JU.
6. Information and documents provided as part of checks or audits must be treated on a confidential basis.
7. The above checks and audits may be carried out either directly by the Chips JU's own staff or by any other outside body authorised to do so on its behalf, whereby the Hosting Consortium shall be previously informed in writing thereof.
8. In addition to the Chips JU, the European Commission, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), and the Court of Auditors may carry out checks and audits in accordance with their respective competences and the applicable legal framework.
9. For actions and procurement funded from the Digital Europe Programme, audits of recipients of Union funds under this programme should be carried out in compliance with Regulation (EU) 2021/694.
10. In relation to the action funded under the relevant grant agreement, the rules on checks and audits in the grant agreement shall apply.

### CHAPTER 3

#### *Article 22 - Subcontracting and third parties*

1. The Hosting Consortium is allowed to subcontract certain activities to be performed to third parties. However, the Hosting Consortium must ensure that the percentage of subcontracting activities is proportionate and justifiable in accordance with the objective of the Agreement. The Hosting Consortium will remain bound by its obligations under the Agreement and will be solely responsible for the proper performance of this Agreement, including by third parties acting in their capacity as subcontractors.
2. The Hosting Consortium will make sure that the Subcontract does not affect rights and guarantees granted to the Chips JU by virtue of this Agreement.
3. In relation to the action funded under the relevant grant agreement, the rules concerning subcontracting in the grant agreement shall apply.

### CHAPTER 4

#### *Article 23 - Consequences of non-compliance with obligations*

1. The Hosting Consortium will use its best endeavours to fulfil its obligations under this Agreement and provide services under the highest professional standards and in a timely manner, within the deadlines agreed between the Parties.
2. The Chips JU will use its best endeavours to fulfil its obligations under this Agreement in a timely manner, within the deadlines agreed between the Parties.



3. The Chips JU and the Hosting Consortium will use their best efforts to solve any non-compliance issue amicably, taking into account the best interests of the Union, the interests of the Hosting Consortium and the shared objectives of the Chips JU and the Hosting Consortium.
4. In case one of the Parties is not in position to fulfil its obligations under this Agreement on time for whichever reason, it will notify the other Party without delay, stating the nature of the circumstances, their likely duration and effects and the measures taken to limit or mitigate any damage.
5. In case a status report shows that the services provided by the Hosting Consortium are not fully compliant with this Agreement, the Chips JU will evaluate the severity of the problem and its consequences and discuss the conclusions of this evaluation with the Hosting Consortium.
6. If the obligations of the Hosting Consortium included in this Agreement have not been implemented accordingly or if any obligation under the Agreement has been breached by the Hosting Consortium, the Chips JU will send a Formal notification to the Coordinator of the Hosting Consortium requesting the Hosting Consortium to rectify that situation or provide explanations and intended rectification or remedial actions. The Hosting Consortium will respond to this notification within ten (10) calendar days following the date of receipt.
7. If the Hosting Consortium does not respond within the abovementioned timeframe, the Chips JU will send a reminder by way of a second Formal notification to the Coordinator, specifying the measures it intends to take if the Hosting Consortium does not respond to its request or does not take appropriate and reasonable measures to rectify the situation. The Hosting Consortium must respond to this second Formal notification within ten (10) calendar days following the date of receipt. If the Hosting Consortium does not respond to this reminder, the Chips JU will have the right to take the measures described in paragraph 8 and in Article 24 notwithstanding any other legal rights of the Chips JU, taking into account the principle of proportionality and the seriousness of the breach or non-compliance.
8. In all cases, excluding cases of Force majeure which are regulated under Article 30 of this Agreement, the Chips JU will have the right to request from the Hosting Consortium to comply with the Agreement and/or proportionally reduce or recover amounts unduly paid to the Hosting Consortium, as appropriate and in accordance with the principle of proportionality and the seriousness of the breach or non-compliance and after using its best endeavours to allow the Hosting Consortium to exercise its right to be heard. In all cases, including cases of Force majeure, the Chips JU will have the right to request from the Hosting Consortium to take remedial measures, as appropriate.
9. Before the Chips JU proceeds as described in paragraph 8 of this Article, it will send a Formal notification to the Hosting Consortium which will include the following information:
  - a. the measures it intends to take and the start date of their application;
  - b. the Chips Joint Undertaking's intention to reduce any amount to be paid and the corresponding amount;
  - c. the reasons for reduction and/or other measures; and
  - d. invitation to the Hosting Consortium to submit observations within ten (10) calendar days following the date of receipt of the Formal notification.
10. In all cases, where the fault, situation or event is attributable to error or negligence on the part of the Vendor and in cases referred to in Article 3(6), the Hosting Consortium shall not be considered as non-compliant, in breach of its obligations or liable.
11. In relation to the action(s) funded under the relevant grant agreement(s), the rules regarding non-



compliance in the grant agreement(s) shall apply.

#### *Article 24 - Liquidated Damages*

1. If the Hosting Consortium fails to perform its obligations under this Agreement within the applicable time limits, and such cases constitute significant and/or recurring and/or persistent non-compliance or breach of the obligations under the Agreement, the Chips JU, taking the principle of proportionality into account, may claim liquidated damages for each day or hour of delay using a formula that will be defined in relation and before any service is provided. This does not apply to downtime that is fault of the contractor for the cloud service.  
  
The aggregate maximum amount of liquidated damages payable per each calendar year under this Agreement will be limited to **EUR [x] million.**
2. The amount of such liquidated damages that results from the application of the formula above may be reduced by the Chips JU if it is considered justified by the seriousness of the breach and the specific character and circumstances of the non-compliance or breach, taking the principle of proportionality into account.
3. Liquidated damages may be imposed in addition with other reductions in the Union's financial contribution.
4. The Chips JU must formally notify the Hosting Consortium of its intention to apply liquidated damages and the corresponding calculated amount.
5. The Hosting Consortium will have thirty (30) calendar days following the date of receipt to submit observations. Failing that, the decision of the Chips JU becomes enforceable the day after the deadline for submitting observations has elapsed.
6. If the Hosting Consortium submits observations, the Chips JU, taking into account the relevant observations, must notify the Hosting Consortium:
  - a. of the withdrawal of its intention to apply liquidated damages; or
  - b. of its decision to reduce the amount of the liquidated damages as appropriate; or
  - c. of its final decision to apply liquidated damages and the corresponding amount.
7. The Parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to comply with the Hosting Consortium's obligations within the agreed time limits set out in this Agreement.
8. Any claim for liquidated damages shall not affect the Hosting Consortium's actual or potential liability that exceeds the amount of damages provided for herein paid by the Hosting Consortium for the breach of the Chips JU's rights under other articles in this Agreement, and the relevant grant agreement.
9. In relation to the action funded under the relevant grant agreement, the rules in the grant agreement shall apply in addition to the provisions of this article.

#### *Article 25 - Liability*

1. The Chips JU shall not be liable for any damage or loss caused by the Hosting Consortium, including any damage or loss to third parties during or as a consequence of the performance of the Agreement, and the coordination of the Design Platform on its behalf, unless the loss or damage was caused by



wilful misconduct or gross negligence by the Chips JU.

2. The members of the Hosting Consortium are jointly responsible for the implementation of the action. If one of the Hosting Consortium members fails to implement their part of the action, the other Hosting Consortium members 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). Each member of the Hosting Consortium may be held responsible for damages up to the entire amount awarded by the Chips JU for the implementation of the Design Platform to this member.
3. In line with Article 1(2), the internal arrangements of the Hosting Consortium shall cover rules on liability. These rules shall specify how the members of the Hosting Consortium will share their responsibility in case one or more member(s) of the Hosting Consortium fail(s) to fulfil its/their obligations under the current Agreement.
4. When determining the liability of the Hosting Consortium under the Agreement the principle of proportionality shall be applied and the seriousness of the breach or non-compliance shall be taken into account.
5. The Hosting Consortium will be liable for any loss or damage caused to the Chips JU during or as a consequence of the performance of the Agreement. The aggregate maximum liability for damages of the Hosting Consortium based on the Agreement will not exceed the residual value of the Design Platform cloud service, including possible liquidated damages, or other reduction in accordance with the grant agreement. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the Hosting Entity or of its personnel or subcontractors, as well as in the case of an action brought against the Chips JU by a third party, the Hosting Entity will be liable for the whole amount of the damage or loss.
6. If a third party brings any action against the Chips JU in connection with the performance of the Agreement, the Hosting Consortium must closely collaborate and assist the Chips JU in the legal proceedings, including by intervening in support of the Chips JU upon request.
7. If the liability of the Chips JU towards the third party is established and such liability is caused by the Hosting Consortium during or as a consequence of the performance of the agreement, paragraphs 2 and 3 apply.
8. In relation to the action funded under the grant agreement, the rules on liability for damages in the grant agreement shall apply.

#### *Article 26 - Insurance*

1. The Hosting Consortium must take out or maintain an insurance policy to cover the coordination of the Design Platform cloud service and against risks and damage or loss relating to the performance of the Design Platform cloud service. Such insurance policy of the Hosting Consortium shall also cover instances of Force majeure events customarily covered by such insurance. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Hosting Consortium must provide evidence of insurance coverage to the Chips JU.

#### *Article 27 - Termination of the Agreement/Withdrawal of a member*

1. The Agreement may be terminated by mutual consent of the Parties in case the subject matter of this Agreement has been fulfilled or becomes impossible to fulfil.
2. The Chips JU may decide to terminate the present Agreement in case the relevant grant agreement has



been terminated either by the Chips JU or by the Hosting Consortium.

3. In case of a withdrawal of a member of the Hosting Consortium, the consequences of such situation must be discussed in good faith between the Hosting Consortium, including the withdrawing member, and the Chips JU at least 6 months (unless otherwise agreed by the Parties) before the effective date of this withdrawal to identify any adjustments required to ensure the continued proper operation of the Design Platform. In case no agreement can be reached, paragraph 1 shall apply.

#### **Article 28 - Termination by the Chips JU of the Agreement for specific reasons**

1. The Chips JU may terminate the Agreement if the Hosting Consortium does not remedy within sixty (60) calendar days from written notification any material or serious breach or non-compliance issue falling under its responsibility concerning the following situations, unless manifestly such breach or non-compliance cannot by its nature be remedied:
  - a) if the Hosting Consortium is unable, through its own fault, to obtain any permit or licence required for the performance of the Agreement;
  - b) the Hosting Consortium or any person that assumes unlimited liability for the debts of the Hosting Consortium is in one of the situations provided for in points (a) and (b) of Article 136(1) of the EU Financial Regulation<sup>6</sup>;
  - c) the Hosting Consortium is subject to any of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the EU Financial Regulation;
  - d) the procedure for selecting the Hosting Consortium proves to have been subject to Substantial Errors, Irregularities or Fraud;
  - e) the Hosting Consortium does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>7</sup>;
  - f) the Hosting Consortium is in a situation that constitutes a Conflict of interest or a professional conflicting interest as referred to in Article 11;
  - g) a change to a member of the Hosting Consortium's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the Agreement in an adverse manner.
  - h) the Hosting Consortium does not comply with or is in serious breach of its obligations under this Agreement.
  - i) If the Chips JU has terminated the relevant grant agreement.

#### **Article 29 - Procedure and effect of termination**

1. One Party must formally notify the other Party of its intention to terminate the Agreement and the grounds for termination. The termination will become effective on the date on which the Design Platform will no longer be hosted by the Hosting Consortium, unless otherwise agreed by the Parties, taking into account the grounds for termination.

<sup>6</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1–222.

<sup>7</sup> OJ L 94 of 28.03.2014, p. 65.



2. In such case, at the request of the Chips JU and regardless of the grounds for termination, the Hosting Consortium must provide all necessary assistance, including information, documents and files, to allow the Chips JU to complete, continue or transfer the Design Platform coordination to a new Hosting Consortium, with minimum interruption or adverse effect on the quality or continuity of the coordination of the Design Platform. The Parties may agree to draw up a transition plan detailing the transfer of the Design Platform coordination.
3. In cases where the Agreement has been terminated on the grounds that the Hosting Consortium does not comply with its obligations under this Agreement, the Hosting Consortium must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means or otherwise causes additional expenses, in which case it must provide an estimate of the costs involved; the Parties will negotiate a relevant arrangement in good faith.
4. If the Agreement has been terminated on the basis of Article 28, the Hosting Consortium will be liable for direct damages incurred by the Chips JU as a result of the termination of the Agreement, including the cost of selecting another Hosting Consortium, unless the damage was caused by Force majeure.
5. In all cases, the Parties must take all appropriate measures to minimise costs and prevent damage to the other Party and to the Design Platform.

#### *Article 30 - Force majeure*

1. If a Party is affected by Force majeure, it must immediately notify the other Party, stating the nature of the circumstances, their likely duration and the foreseeable effects.
2. The Party faced with Force majeure may not be considered in breach of its obligations under the Agreement if it has been prevented from fulfilling them by Force majeure. However, the Hosting Consortium shall make sure that the insurance policy it has taken out in accordance with Article 26 of this Agreement shall also cover instances of Force majeure events customarily covered by such insurance.
3. The Parties must take all reasonable measures to limit any damage due to Force majeure. They must do their best to resume the implementation of the action as soon as possible.
4. In relation to the action funded under the grant agreement, the rules on Force majeure in the grant agreement will apply.

### **CHAPTER 5**

#### *Article 31 - Entry into force and duration*

1. The Agreement shall enter into force on the date on which it is signed by the last Party and shall remain in force until 31 December 2031.
2. The extension of the duration of the present Agreement shall be subject to the express written agreement of both Parties.

#### *Article 32 - Amendments*



1. Any amendment to the Agreement shall be made by mutual agreement of the Parties in writing.
2. Any amendment shall not make changes to the Agreement that might alter its purpose.
3. Any request for amendment shall be duly justified and shall be sent to the other Party in due time before it is due to take effect, except in cases duly substantiated by the Party requesting the amendment and accepted by the other Party.
4. Amendments shall enter into force on a date agreed by the Parties or, in the absence of such an agreed date, on the date on which the last Party signs the amendment.

#### **Article 33 - Severability**

1. Each provision of this Agreement shall be severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it shall be severed from the remainder of the Agreement. This shall not affect the legality, validity or enforceability of any other provisions of the Agreement, which continue in full force and effect. The illegal, invalid or unenforceable provision shall be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible to the real intent of the Parties. The replacement of such a provision shall be made in accordance with Article 32. The Agreement shall be interpreted as if it had contained the substitute provision as from its entry into force.

#### **Article 34 - Applicable law and settlement of disputes**

1. The Agreement shall be governed by Union law, supplemented for any matter not covered by the Rules Applicable to the Chips JU or by other Union legal acts by the law of the Member State where the Coordinator of the Hosting Consortium is located.
2. The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or validity of the Agreement. Any dispute which cannot be settled amicably must be submitted to the jurisdiction of the General Court or, on appeal, the Court of Justice of the European Union.
3. Nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities which are accorded to Chips JU by its constituent act.

#### **Article 35 - Communication between the Parties**

1. For the purpose of this Agreement, communications shall be sent to the following addresses:

a) Chips JU:

White Atrium Building  
Avenue de la Toison d'Or 56-60  
1060 Brussels  
Belgium.

Email: [\[insert email\]](#)

b) Hosting Consortium (the Coordinator):



[Insert Address]

Email: [insert email]

***Article 36 - Form and means of communication***

1. Any communication of information, notices or documents under the Agreement shall:
  - a) be made in writing in paper or electronic format in the language of the Agreement;
  - b) bear the Agreement number;
  - c) be made using the relevant communication details set out above; and
  - d) be sent by mail or email.
2. If a Party requests written confirmation of an email within a reasonable time, the other Party shall provide an original signed paper version of the communication as soon as possible.

***Article 37 - Date of communications by mail and electronic mail (email)***

1. Any communication shall be deemed to have been made when the receiving Party receives it, unless this Agreement refers to the date when the communication was sent.
2. Email shall be deemed to have been received on the day of dispatch of that email, provided that it is sent to the email address indicated in Article 35. The sending Party shall be able to prove the date of dispatch. In the event that the sending Party receives a non-delivery report, it shall make every effort to ensure that the other Party actually receives the communication by email or mail. In such a case, the sending Party shall not be held in breach of its obligation to send such communication within a specified deadline.
3. Mail sent to the Chips JU shall be deemed to have been received by the latter on the date on which the Chips JU registers it.
4. Formal notifications shall be considered to have been received on the date of receipt indicated in the proof received by the sending Party that the message was delivered to the specified recipient.



**SIGNATURES**

**IN WITNESS WHEREOF** the undersigned, being duly authorized, have signed this Hosting Agreement.

**The Coordinator, for the Hosting Consortium**

**For the Chips JU**

**Annex I Service Level Agreement (SLA) - Required Hosting Activities**

The Hosting Consortium is responsible for implementing, hosting and running the Design Platform and coordinating its development, operation, and maintenance as well as related user support activities, in close collaboration with the Chips JU.

The Hosting Consortium shall oversee that the cloud service procured by the Chips JU is secure, scalable, and accessible 24/7. The service shall include the provision of a user help desk support, robust security measures, data backup and recovery, and regular maintenance and updates.

The Hosting Consortium shall continuously monitor the operation of the Design Platform and the quality of services provided to users. This includes incorporating user feedback loops and adopting corrective measures as necessary.

The Hosting Consortium shall curate the repositories hosted on the cloud service, procured by the Chips JU. These repositories shall include design assets, such as open-source IP blocks, design templates, PDKs, open-source tools, and reusable design elements.



**Annex II. Description of Action (Application: [insert application reference]) (Confidential)**

*Here comes the selected EoI proposal.*



**Annex III. Summary table of financing of the Design Platform (Confidential)**



**Annex IV. Key Performance Indicators (KPIs)**