**THIRD PARTY AGREEMENT**

**TRINITY**

**Open Call 2**

Date: 1.2.2021

This Agreement and its annexes (hereinafter referred as “**the Agreement”**) is between

TAMPERE UNIVERSITY (TAU), TAMPEREEN KORKEAKOULUSÄÄTIÖ SR, Business ID 2844561-8, as the coordinator of the TRINITY Consortium representing the TRINITY Consortium. TAU is hereinafter referred to as the Coordinator, duly represented by [Dean Professor Martti Kauranen]

and

[BENEFICIARY NAME]- a private company organized under the laws of [COUNTRY] established in [ADRESS – STREET, POST CODE, CITY, COUNTRY], with VAT nr [TAX IDENTIFICATION NUMBER] duly represented by [PERSON OF REPRESENTATION WITH FUNCTION]

hereinafter jointly referred to as **Beneficiary**,

Coordinator and the Beneficiary are hereinafter each individually referred to as a **Party** and collectively as **Parties**.

**WHEREAS**, the **Coordinator** and the following Consortium Parties form a TRINITY CONSORTIUM: TAMPEREEN KORKEAKOULUSÄÄTIÖ SR (TAU), CENTRIA AMMATTIKORKEAKOULU OY (CENT), UNIVERSITETET I TROMSOE (UiT), INSTITUT JOZEF STEFAN (JSI), PANEPISTIMIO PATRON (LMS), BUDAPESTI MUSZAKI ES GAZDASAGTUDOMANYI EGYETEM (BME), FRAUNHOFER GESELLSCHAFT ZUR FOERDERUNG DER ANGEWANDTEN FORSCHUNG E.V. (Fraunhofer), FLANDERS MAKE VZW (MAKE), ELEKTRONIKAS UN DATORZINATNU INSTITUTS (EDI), LEUVEN SECURITY EXCELLENCE CONSORTIUM L-SEC VZW (LSEC), FASTEMS OY AB (FASTEMS), LP-MONTAGETECHNIK GMBH (LP), F6S NETWORK LIMITED (F6S), F6S NETWORK LIMITED (F6S), COMITE EUROPEEN DE COOPERATION DES INDUSTRIES DE LA MACHINEOUTIL

CECIMO AISBL (CECIMO), and TOPPINDUSTRISENTERET AS (DNT). All the above listed consortium members and the Coordinator hereinafter jointly referred as **Consortium** **Members**. The Consortium is duly represented by TAU, which acts as a **Coordinator** of the Consortium and acts on behalf of all above-mentioned Consortium Members in this Agreement.

**WHEREAS**, TRINITY is a project funded by the Horizon 2020 Programme under grant agreement Nº 825196 — TRINITY — H2020-DT-2018-2020/H2020-DT-2018-1 (**Grant Agreement**). The European Union (**EU**), represented by the European Commission (**EC**), and the Coordinator on behalf of the Consortium have signed the grant agreement and a consortium agreement for the implementation of the “TRINITY” project within the framework of the Horizon2020 Programme (**TRINITY**).

**WHEREAS**, Within the TRINITY a financial support for third parties is provided subject separate open calls organised within the TRINITY. As stipulated in the Grant Agreement, through the open calls third parties will be selected and financially supported to execute certain Demonstrations for the TRINITY.

**WHEREAS,** The TRINITY External Demonstration Open call duration is 6-10 months.

**WHEREAS**, The Beneficiary applied for the TRINITY’s Open Call 2 (**Call**) to receive support for implementation of the project [BENEFICIARY’S PROJECT NAME] (**Demonstration**) and has received a favourable response from the TRINITY’s Open Call 2 Selection Committee.

**NOW THEREFORE,** the **Parties**, enter into this Agreement with the terms and conditions below including those in its Annexes listed in Article 19 below.

## SUBJECT OF THE AGREEMENT

This Agreement sets out the Parties’ rights and mutual obligations with reference to a Demonstration within the TRINITY Demonstration program, in particular this Agreement specifies:

* Beneficiaries’ obligations related to the Demonstration and participation in the Demonstration program,
* the terms and conditions of transferring financial support by Consortium to the Beneficiaries.

## DEFINITIONS

1. **Open Call Committee** (OCC) has the meaning defined in section 5 below.
2. **Demonstration Program** means 10 month period after the Open Call, where the approved 3rd party demonstration development is active.
3. **Individual Implementation Plan** means the detailed project plan for the Demonstration, where key performance indicators (KPIs), milestones and tasks are defined.
4. **Results** means any (tangible or intangible) output of the Demonstration such as data, knowledge, software, report or information — whatever its form or nature, whether it can be protected or not — that is generated in the Demonstration, as well as any rights attached to it, including intellectual property rights.
5. **Background** means any data, know-how or information – whatever its form or nature (tangible or intangible) is, including any rights such as intellectual property rights – that(a) is held by a Party or a Consortium Member before the effective date of the this Agreement, and (b) is Needed by another Party or a Consortium Member to implement its own tasks within the Demonstration or to exploit its own Results, but solely to the extent that such data, information, know-how and/or intellectual property rights are introduced into the Demonstration by the owning Party or Consortium Member.
6. **Needed** means
* for implementation of the Demonstration and/or TRINITY, that without the grant of such access rights, carrying out the tasks assigned to the recipient would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources
* for exploitation of own Results, access rights are Needed if, without the grant of such Access Rights, the exploitation of own Results would be technically or legally impossible.
1. **Confidential Information** meansall information, in whatever form or mode of communication, which is disclosed by a Party (Disclosing Party) to any other Party (Recipient) either directly or indirectly in connection with the Demonstration during its implementation and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party.

## SCHEDULE OF THE OPEN CALL

1. Demonstration program 2 shall start from [1.10.2021] (**Starting Date**).
2. The duration of the Demonstration shall be 6-10 months as indicated in the Proposal by applicant (Party).
3. In the first month Individual Implementation Plan (IIP) will be evaluated (**IIP Evaluation**).
4. In the middle of the term mentioned in the point 2 above, the midterm evaluation (**Midterm Evaluation**), specified in article 5 shall be carried out.
5. At the end of the term mentioned in the point 2 above, the final evaluation (**Final Evaluation**), specified in article 5 shall be carried out.
6. At the end of the Demonstration Program a two days Open Days workshop and demonstration event will be organized, where beneficiaries will present their Results.

## BENEFICIARIES’ OBLIGATIONS

INDIVIDUAL IMPLEMENTATION PLAN

1. Beneficiaries shall define Individual Implementation Plan (IIP), where the KPIs and Deliverables of Demonstration are established. The IPP must be finalized by month 1.
2. The final version of the IIP will be approved by the TRINITY Open Call committee.
3. The IIP shall be prepared and annexed as Annex 2 to the Agreement till [31.10.2021].
4. Annexing the IIP to the Agreement do not require any additional consent of Parties.
5. Beneficiaries are obliged in best efforts basis to undertake all necessary actions to reach KPIs and Deliverables established in the IIP. In addition, the Beneficiaries shall implement the recommendations and requests included in the Ethical Evaluation Report within the execution of the Demonstration. Payment of the Grant is subject to the progress of the Demonstration as indicated in the IIP and described in this Agreement.
6. Beneficiaries shall participate in all events enumerated in the article 2 under the consequence of being excluded from the TRINITY External Demonstration program and subject to refund and collection of the Grant.

## EVALUATION OF DEMONSTRATION

The Demonstration shall be evaluated three times during the Demonstration: IIP Evaluation, Midterm Evaluation and Final Evaluation.

IIP EVALUATION

1. The Individual Implementation Plan Evaluation will is carried out by the Open Call Committee (OCC) consisting of the representatives of the Consortium Members.
2. IIP shall define the demonstration plan, tasks and deliverables and KPIs.
3. The Demonstration may not enter the Demonstration program if it does not fulfil requirements for the IIP.

MIDTERM EVALUATION

1. The Midterm Evaluation is carried out by the Open Call Committee (**OCC**). During the Midterm Evaluation the technical & business performance is evaluated based on the KPI’s and Deliverables that, according to the IIP, should be achieved within the midterm of Demonstration Program.
2. To be positively evaluated during the Midterm Evaluation the Demonstration shall:
	1. reach the minimum KPI’s established in the IIP, and
	2. meet Deliverables established in the IIP.
3. The Demonstration may be asked to leave the Demonstration program if it does not fulfil requirements for the progress specified in the article 3 above.

FINAL EVALUATION

1. Final Evaluation is carried out on the same conditions as the Midterm Evaluation but the KPI’s and Deliverables are verified in accordance with the IIP’s requirements for the end of the of the Demonstration Program 2.
2. The Demonstration may be excluded from the Demonstration Program if it does not fulfil requirements specified in the article 3 and established in the IIP for the end of the Demonstration program 2.
3. General Assembly (GA), comprised of one representative from each member of the Consortium, will be the body making the decision on excluding an Demonstration from the Demonstration Program if the Demonstration has not fulfilled the KPI’s and/or reached the Deliverables required within the mid or final evaluation.

## GRANT AMOUNT

1. In the Demonstration Program Beneficiaries may receive the financial support for implementing the Demonstration in the total amount of [AMOUNT] (IN WORDS) EUR (**Grant**), whereas

[BENEFICIARY’S NAME] may receive Grant in the maximum amount of [AMOUNT] (IN WORDS) EUR,

[BENEFICIARY’S NAME] may receive Grant in the maximum amount of [AMOUNT] (IN WORDS) EUR,

[BENEFICIARY’S NAME] may receive Grant in the maximum amount of [AMOUNT] (IN WORDS) EUR,

subject to the following rules:

* 1. The total amount of the Grant received within the TRINITY Open Call 2 shall not exceed 200.000,00 (two hundred thousand) EUR per Beneficiary.
	2. The maximum amount of the Grant received [BENEFICIARY’S NAME] as an Open call participant shall not exceed 300.000,00 (three hundred thousand) EUR within the TRINITY and DIH² projects funded by the European Commission (Call H2020-DT-2018-1).
1. Beneficiaries shall receive the Grant in the following tranches (**Payments**):
	1. 30% of the Grant shall be transferred to the Beneficiaries, under the condition that the IPP is evaluated by the OCC, mentioned in the Article 5.
	2. 40% of the Grant shall be transferred to the Beneficiaries, under the condition that the Demonstration is positively evaluated during the Midterm Evaluation, mentioned in the Article 5.
	3. 30% of the Grant shall be transferred to the Beneficiaries after the end of the demonstration project.
2. Payments shall be transferred without undue delay after fulfilling the conditions mentioned in the point 2 above, provided that the Beneficiaries have provided all necessary information and materials needed for the payment.
3. The funds received by the Beneficiary are owned by the EC until the Payment of Balance from EC for the whole TRINITY Consortium occurs. Coordinator is a mere holder and manager of the funds for Beneficiaries in the name of the Consortium.
4. All Payments will be made to the Beneficiaries by bank transfer from Coordinator. Payments made by the Coordinator shall be considered to have been carried out on the date when they are debited from Coordinator’s account. All Payments shall be made in euros. The Beneficiaries shall provide a bank account denominated in euros, otherwise the Beneficiary bears the costs of the currency conversion. All Payments shall be made to the bank account indicated in the financial identification form of the EC being an Annex 5 to this Agreement.

## REPRESENTATIONS AND WARRANTIES

ELIGIBILITY CONDITIONS

1. By signing this Agreement, the Beneficiary declares that it meets the eligibility conditions as defined in the Guide for Applicants applicable to the Call and attached as Annex 5 to this Agreement.
2. The Beneficiaries represent and warrant that they will implement the Demonstration, in compliance with the provisions of the Agreement and all legal obligations under applicable EU, international and national law, and European code of conduct for research integrity.
3. By signing this Agreement, the Beneficiary accepts the Grant and agrees to assume responsibility for it and implement it in accordance with this Agreement, including all the rights, obligations and conditions sets out herein. Further, the Beneficiary confirms that all information provided in this Agreement, its Annexes and during the Call are true, correct and up to date as of the date of signing this Agreement.

PROVISIONS OF THE GRANT AGREEMENT

1. The **Beneficiary** accepts the terms and conditions of the Grant Agreement insofar as they relate to the tasks, which are contracted to it hereby, mainly the provisions that are attached as Annex 1 to this Agreement. Additionally, the Beneficiary acknowledges that the Coordinator and the other Consortium Members are bound by certain obligations arising out of the Grant Agreement and the Consortium Agreement. The Beneficiary hereby agrees to comply with all instructions and requests of the Consortium Members so that the Coordinator and the other Consortium Members are able to comply with all their obligations under those agreements.

## KEEPING RECORDS — SUPPORTING DOCUMENTATION

1. The **Beneficiary** must keep adequate records and other supporting documentation to prove the proper implementation of the Demonstration in accordance with requirements of the national laws and usual accounting principles of the beneficiary.
2. The **Beneficiary** must provide — during implementation of the Demonstration andafterwards — any reasonable information requested by the **Coordinator** or EC or other Consortium Members in order to verify proper implementation of the Demonstration and compliance with any other obligation under this Agreement. For clarity, the supporting documentation must be made available upon request or in the context of checks, reviews, audits or investigations that may be conducted subject to the provisions of the Grant Agreement defined in Annex 1 hereto.
3. If there are on-going checks, reviews, audits, investigations, litigation or other pursuits of claims under the Agreement (including the extension of findings), the **Beneficiary** must keep the records and other supporting documentation until the such checks, reviews, audits, investigations, litigation or other pursuits of claims under the Agreement are resolved.
4. For clarity, the **Beneficiary** does not need to identify the actual eligible costs covered to Coordinator to prove the amount declared as the lump sum.

## CONFIDENTIALITY

1. Parties hereby undertake for a period of four years after the termination of this Agreement:
	1. not to use Confidential Information otherwise than for the purpose for which it was disclosed;
	2. to use confidential information only to implement the Agreement unless otherwise agreed between the Parties;
	3. not to disclose Confidential Information to third parties without the prior written consent by the Disclosing Party;
	4. to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strictly need-to-know basis; and
	5. to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in machine readable form as much as practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information due to compliance with applicable laws and regulations or for compliance with on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.
2. The Recipients shall be responsible for the fulfilment of the above obligations on behalf of their employees or third parties involved in the Demonstration and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Demonstration as well as after the termination of the contractual relationship with the relevant employee or third party.
3. Consortium Members shall not be deemed as third parties in regard to disclosure of Confidential Information. In addition, the **Coordinator** may disclose confidential information to its staff, other EU institutions and bodies. Especially the Coordinator may disclose confidential information to third parties, if:
	1. this is necessary to implement the Agreement or TRINITY or safeguard the EU’s financial interests and
	2. the recipients of the information are bound by an obligation of confidentiality.
4. Underthe conditions set out inArticle 4 of the Rules for Participation Regulation No 1290/2013[[1]](#footnote-1), EC must moreover make available information on the results to other EU institutions, bodies, offices or agencies as well as Member States or associated countries.
5. The above obligation of confidentiality shall not apply for disclosure or use of Confidential Information, if and insofar as the Recipient can show that:
* the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
* the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
* the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the reasonable knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
* the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
* the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
* the Confidential Information was already known to the Recipient prior to disclosure,
* or the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order. If a Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.
1. The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Demonstration as with its own confidential and/or proprietary information but no less than reasonable care.
2. The **Beneficiary** shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.
3. In addition to the confidentiality obligations of this Article and if considered the confidentiality obligations above do not provide sufficient protection, each Consortium Member may request a **Beneficiary** to enter into a specific NDA to safeguard said Consortium Member’s confidential and proprietary information disclosed for the purposes of the TRINITY and Demonstration program.
4. The same obligations on confidentiality agreed herein apply to the **Beneficiaries** when receiving Confidential Information from the other **Consortium Members** than the **Coordinator**.

## OWNERSHIP OF RESULTS

1. Results are owned by the Party or the Consortium Member that generates them.
2. Where Results are generated from work carried out jointly by the Parties to this Agreement or by the Beneficiary(ies) and other Consortium Members and it is not possible to separate such joint invention, design or work for the purpose of applying for, obtaining and/or maintaining the relevant patent protection or any other intellectual property right, the Parties or the Beneficiary(ies) and the other Consortium Members shall have joint ownership of this work. The joint owners shall, within a six (6) month period as from the date of the generation of such Results, establish a written separate joint ownership agreement regarding the allocation of ownership and terms of exercising, protecting and exploiting such jointly owned Results and the division of related costs on a case by case basis. However, until the time a joint ownership agreement has been concluded and as long as such rights are in force, such Results shall be jointly owned in shares according to their share of contribution (such share to be determined by taking into account in particular, but not limited to, the contribution of a joint owner to an inventive step, the person months or costs spent on the respective work etc.) to the Results by the joint owners concerned.

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for internal non-commercial research activities on a royalty-free basis, and

- each of the joint owners shall be entitled to otherwise exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:

1. at least 45 calendar days advance notice; and
2. fair and reasonable compensation.

The joint owners shall agree on all protection measures and the division of related cost in advance.

1. The Beneficiary shall grant a non-exclusive, royalty-free, transferable and unlimited right of use with the right for sub-licensing to the Coordinator and the other Consortium Members for implementation of the TRINITY, including the Demonstration program with regard to all Results generated by the Beneficiary in the course of the work according to this Agreement and the Background of the Beneficiary related to such Results of the Beneficiary. Access rights to Beneficiary’s Results and Background beyond the above said are subject to separate agreement and fair and reasonable terms to be agreed therein.
2. Access rights for the Beneficiaries on Results generated by the Consortium Partners, if Needed for implementation of their own tasks in the Demonstration, may be granted for the duration of the Demonstration on royalty-free basis but strictly to the extent Needed to fulfil the Demonstration tasks. Access rights to Results generated by the Consortium Members may be granted to the Beneficiaries if they are Needed for exploitation of Beneficiaries own Results, subject to fair and reasonable compensation to be agreed in a separate agreement. Such request for access rights needs to made within 6 months after the end of the Demonstration.
3. Subject to the prior written approval of the owning Party or a Consortium Member, access rights on Background of Consortium Members to Beneficiaries, if Needed for implementation of their own tasks in the Demonstration, may be granted for the duration of the Demonstration on royalty-free basis but strictly to the extent Needed to fulfil the Demonstration tasks. The Consortium Member granting such access rights may require that a separate agreement on the Access rights is made.
4. For sake of clarity, Consortium Member involved in the Demonstration cannot not grant the Beneficiaries any access rights to Results or Background of another Consortium Member without prior written authorization of the other Consortium Member owning or holding the rights for said Results or Background.
5. For the avoidance of doubt, any grant of access rights not covered by this Section shall be at the absolute discretion of the owner and subject to such terms and conditions as may be agreed between the owner and recipient. A Party requesting access rights must show that they are Needed.

## DISSEMINATION

1. All dissemination actions must follow the guidelines given in Annex 2 section 6.3.
2. Each Party agrees that any dissemination activity (including publications, presentations or contributions to any standards) by the Beneficiary is subject to the prior written approval of the Coordinator.
3. The Coordinator and the other Consortium Members are entitled to include the main issues and information regarding the Demonstration in their reporting towards the European Commission.

## COMMUNICATION BETWEEN THE PARTIES

1. Communication under the Agreement (requests, submissions, ‘formal notifications’, etc.) must be made in writing. For the purposes of this Agreement, written form shall be deemed to include e-mail communication sent to the e-mail addresses indicated below including supporting documents. Parties appoint the following authorised persons to communicate:
	1. For the [BENEFICIARY NAME] **-** [authorized person – name and email]
	2. For the **Coordinator**: Minna Lanz (minna.lanz@tuni.fi)

## Communications are considered to have been made once they are received by the receiving Party (i.e. on the date and time of receipt by the receiving Party, as indicated by the time stamp).

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## PROCESSING OF PERSONAL DATA

Any personal data under the Agreement will be processed in accordance with applicable EU and national privacy laws. The Parties agree not to disclose to each other personal data (as defined in the EU general data protection regulation 2016/679) without entering into a separate written agreement for such purpose, except for necessary personal data of persons participating in the preparation and conclusion of this Agreement, which the Parties warrant that they are legally entitled to disclose.

## RECOVERY OF UNDUE AMOUNTS

1. The **Coordinator** will claim back any amount that was unduly paid or is otherwise recovered by the EC from the Coordinator related to the respective Demonstration. In such a case, the **Coordinator** will formally notify the **Beneficiary** about the recovery. The notice will include following information:
	1. information of the **Coordinator’s** intention to recover the amount due and the reasons why;
	2. request for the **Beneficiary** to submit observations within 7 days of receiving notification.
2. If no observations are submitted or the **Coordinator** decides to pursue recovery despite the observations it has received, it will formally provide notice of the confirmation of the recovery (together with the notification of amounts due). If payment is not made by the date in the debit note, the **Coordinator** will recover the amount.
3. If payment is not made by the date in the debit note, the amount to be recovered will be increased by late-payment interest at the rate set out below, from the day following the payment date in the debit note, up to and including the date **Coordinator** or the EC receives full payment of the amount. The late payment interest is due at the rate applied by the European Central Bank (ECB) for its main refinancing operations in euros (‘reference rate’).
4. The reference rate is the rate in force on the first day of the month in which the payment deadline expires, as published in the C series of the Official Journal of the European Union.

## LIABILITY FOR DAMAGES

1. The **Coordinator** or a Consortium Member cannot be held liable for any damage caused by the **Beneficiary** or third parties involved in the Demonstration, as a consequence of implementing the Agreement. With the exception of the duty of confidentiality, the liability of the **Coordinator** and Consortium Members for damages is limited to direct damage, but does not extend to indirect damage or consequential losses, such as interruptions in production or other operating losses, loss of revenue or profit, or other indirect losses. The total aggregated liability of the **Coordinator** and Consortium Members hereunder is limited to the amount of twenty thousand (20 000) euros, provided such damage was not caused by a wilful act or gross negligence.
2. Except in case of force majeure, the **Beneficiary** must compensate the **Coordinator** or a respective Consortium Member for any damage it sustains as a result of the implementation of the Demonstration or because the Demonstration was not implemented in full compliance with this Agreement or other breach of this Agreement.
3. The terms of this Agreement shall not be construed to amend or limit any Party’s statutory liability.
4. The Beneficiaries shall jointly, fully and exclusively bear the risks in connection with the Demonstration for which the Grant is granted with this Agreement. The Beneficiaries shall indemnify the Consortium Members for all damages, penalties, costs and expenses which the Consortium Members as a result thereof would incur or have to pay to the European Commission or to any third parties with respect to such Demonstration financially supported and/or for any damage in general, which the Consortium Members incur as a result thereof. In addition, should the European Commission have a right to recovery against the Coordinator or any other Consortium Member regarding the financial support granted under this Agreement, the Beneficiaries shall be jointly responsible to pay the sums in question in the terms and the date specified by the Coordinator. Moreover, the Beneficiaries shall indemnify and hold the Consortium Members, their respective officers, directors, employees and agents harmless from and against all repayments, loss, liability, costs, charges, claims or damages that result from or arising out of any such recovery action by the European Commission.
5. In respect of any information or materials (including Results and Background and Confidential Information) supplied by one Party to another Party or to or by a Consortium Member involved in the applicable Demonstration, no warranty or representation of any kind is made, given or implied as to the sufficiency, accuracy or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Therefore,

- the recipient, shall in all cases be entirely and solely liable for the use to which it puts such information and materials (including Results and Background), and

- there is no liability in case of infringement of proprietary rights of a third party resulting from any access rights that may be granted hereunder.

## TERMINATION OF THE AGREEMENT

1. The **Coordinator**, subject to possible decision of the GA**,** may terminate the Agreement if:
	1. a change to any of the **Beneficiaries**' legal, financial, technical, organisational or ownership situation is likely to substantially affect or delay the implementation of the Demonstration or calls into question the decision to award the Grant;
	2. implementation of the Demonstration is prevented by force majeure or suspended by any of the **Beneficiary** and either:
		* resumption is impossible, or
		* the necessary changes to the Agreement would call into question the decision awarding the Grant or breach the principle of equal treatment of applicants;
	3. any of the **Beneficiaries** is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures under national law;
	4. any of the Beneficiaries do not comply with the applicable national law on taxes and social security;
	5. any of the Beneficiaries (or a natural person who has power to represent or take decisions on its behalf) has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity or has been found guilty of professional misconduct, proven by any means;
	6. any of the Beneficiaries (or a natural person who has power to represent or take decisions on its behalf) has committed:
		1. serious breach of obligations under the Agreement or during the award procedure (including improper implementation of the Demonstration, submission of false information, failure to provide required information, breach of ethical principles);
		2. any of the Beneficiaries (or a natural person who has the power to represent or take decisions on its behalf) 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 from other grants to this Grant (see Article 15);
	7. any of the Beneficiaries is in a conflict of interest position; or
	8. any of the Beneficiaries no longer meets the eligibility conditions;

the Demonstration is not positively evaluated during the Final Evaluation because it does not fulfil requirements specified in the Article 5 point 4 above established in the IMP for the end of the 2nd Stage.

1. The termination will take effect on the day specified in the notice of the termination. The **Beneficiary** may not claim damages due to termination by the **Coordinator**. After termination, the **Beneficiary** is still obliged to:
	1. keep records and other supporting documentation regarding the Grant and Demonstration;
	2. submit itself to checks, reviews, audits and investigations of the **Coordinator** or EC;
	3. submit to cost commitments: claims, recovery of the grant, liability for damages, applicable law, check and audits, confidentiality and ownership and access right provisions;
	4. and comply with the other provisions of the Grant Agreement included in Annex 1.

## FORCE MAJEURE

*‘Force majeure*’ means any situation or event that:

1. prevents either party from fulfilling their obligations under the Agreement;
2. was unforeseeable, exceptional situation and beyond the Parties’ control;
3. was not due to error or negligence on their part (nor on the part of third parties involved in the Demonstration); and
4. proves to be inevitable in spite of exercising all due diligence.

The following cannot be invoked as force majeure:

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

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 Demonstration as soon as possible. The Party prevented by force majeure from fulfilling its obligations under this Agreement cannot be considered in breach of them.

## LANGUAGE

English is the only official language, which shall govern this Agreement as well as all related documents, notices, meetings and processes. This means that any requested deliverables and other communication and reports shall be submitted in English.

## APPLICABLE LAW AND SETTLEMENT OF DISPUTES

1. This Agreement is governed by the applicable EU law, in particular:
	1. Regulation (Eu) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" an repealing Regulation (EC) No 1906/2006;
	2. Regulation (Eu) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC;
	3. Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;

Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union,

suplemented if necessary by the law of Belgium, excluding its choice of law provisions.

1. In addition, the **Beneficiary** bears sole responsibility for abidance by its national law, in particular in relation to tax and social security and labour law.
2. Any dispute concerning the interpretation, application or validity of the Agreement should be settled amicably. All disputes arising out of or in connection with this Agreement, which cannot be solved amicably, shall be finally settled by the competent courts of Brussels.

## ANNEXES OF THE AGREEMENT AND ORDER OF PRIORITY

The following annexes form an integral part of this Agreement:

Annex 1: Open Call 2 brochure, which provides the scope and objectives of the open call;

Annex 2: Guidelines for Applicants;

Annex 3: Application Form, an online application form, available at (link);

Annex 3.1: Proposal Template, a word document providing information on proposal schedule, funding breakdown and costs justification, Ethical & Security details;

Annex 4: TRINITY 3rd Party Agreement, which provides a template of the sub-grant agreement that the successful applicants will be requested to sign;

Annex 4.1 Excerpts of the Grant Agreement (attached to this document);

Annex 5: Bank account information, which collects information on coordinator bank account for which TRINITY payments will be made.

In case of discrepancy between this Agreement and Annex 1, the latter shall prevail. In case of discrepancy between this Agreement and any other annex, the text of this Agreement shall prevail.

## ENTRY INTO FORCE OF THE AGREEMENT

The Agreement will enter into force on the day of signature by the **Coordinator** or the last **Beneficiary**, whichever is later, with the Agreement’s effective day [\_].

**The individual signing below hereby represents and warrants that it is entitled to execute and deliver this Agreement on behalf of the named Party and that this Agreement is binding upon the named Party in accordance with its terms.**

For the **[BENFICIARY’S NAME]** For the **Coordinator**

........................................ ……………………………………….

Done in English on [date of signature] Done in English on [date of signature]

**ANNEX 4.1 Excerpts of the Grant Agreement**

**ARTICLE 22 — CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS — EXTENSION OF FINDINGS**

**22.1 Checks, reviews and audits by the Commission**

**22.1.1 Right to carry out checks**

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

For this purpose the Commission may be assisted by external persons or bodies. The Commission may also request additional information in accordance with Article 17. The Commission may request beneficiaries to provide such information to it directly. Information provided must be accurate, precise and complete and in the format requested, including electronic format.

**22.1.2 Right to carry out reviews**

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

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

If the review is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party.

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

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

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

For **on-the-spot** reviews, the beneficiaries must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available. Information provided must be accurate, precise and complete and in the format requested, including electronic format.

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

The Commission will formally notify the review report to the coordinator or beneficiary concerned, which has 30 days to formally notify observations (‘**contradictory review procedure**’). Reviews (including review reports) are in the language of the Agreement.

**22.1.3 Right to carry out audits**

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

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

If the audit is carried out on a third party (see Articles 10 to 16), the beneficiary concerned must inform the third party. The Commission may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). It will inform the coordinator or beneficiary concerned of the identity of the external persons or bodies. They have the right to object to the appointment on grounds of commercial confidentiality.

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

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

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

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

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

The ‘**final audit report**’ will take into account observations by the coordinator or beneficiary

concerned. The report will be formally notified to it.

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

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

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

Under Regulations No 883/201314 and No 2185/9615 (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

**22.3 Checks and audits by the European Court of Auditors (ECA)**

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161of the Financial Regulation No 966/201216, the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out audits.

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

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

**22.5.1 Findings in this grant**

Findings in checks, reviews, audits or investigations carried out in the context of this grant may lead to the rejection of ineligible costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44) or to any of the other measures described in Chapter 6.

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

Findings in checks, reviews, audits or investigations may lead to a request for amendment for the modification of Annex 1 (see Article 55).

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

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

**22.5.2 Findings in other grants**

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

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

(b) those findings are formally notified to the beneficiary concerned — together with the list of grants affected by the findings — no later than two years after the payment of the balance of this grant.

The extension of findings may lead to the rejection of costs (see Article 42), reduction of the grant (see Article 43), recovery of undue amounts (see Article 44), suspension of payments (see Article 48), suspension of the action implementation (see Article 49) or termination (see Article 50).

**22.5.3 Procedure**

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

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

(a) an invitation to submit observations on the list of grants affected by the findings;

(b) the request to submit **revised financial statements** for all grants affected;

(c) the **correction rate for extrapolation** established by the Commission on the basis of the systemic or recurrent errors, to calculate the amounts to be rejected if the beneficiary concerned:

(i) considers that the submission of revised financial statements is not possible or practicable

or

(ii) does not submit revised financial statements.

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

The Commission may then start a rejection procedure in accordance with Article 42, on the basis of:

- the revised financial statements, if approved;

- the proposed alternative correction method, if accepted

or

- the initially notified correction rate for extrapolation, if it does not receive any observations or revised financial statements, does not accept the observations or the proposed alternative correction method or does not approve the revised financial statements.

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

 (a) an invitation to submit observations on the list of grants affected by the findings and

(b) the flat-rate the Commission intends to apply according to the principle of proportionality.

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

The Commission may then start a reduction procedure in accordance with Article 43, on the basis of:

- the proposed alternative flat-rate, if accepted

or

- the initially notified flat-rate, if it does not receive any observations or does not accept the observations or the proposed alternative flat-rate.

**22.6 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, any insufficiently substantiated costs will be ineligible (see Article 6) and will be rejected (see Article 42).

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

**ARTICLE 23 — EVALUATION OF THE IMPACT OF THE ACTION**

**23.1 Right to evaluate the impact of the action**

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

Evaluations may be started during implementation of the action and up to five years after the payment of the balance. The evaluation is considered to start on the date of the formal notification to the coordinator or beneficiaries.

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

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

**23.2 Consequences of non-compliance**

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

**ARTICLE 35 — CONFLICT OF INTERESTS**

**35.1 Obligation to avoid a conflict of interests**

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

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

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

**35.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43) and the Agreement or participation of the beneficiary may be terminated (see Article 50).

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

**ARTICLE 36 — CONFIDENTIALITY**

**36.1 General obligation to maintain confidentiality**

During implementation of the action and for four years after the period set out in Article 3, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed (‘**confidential information**’).

If a beneficiary requests, the Commission may agree to keep such information confidential for an additional period beyond the initial four years.

If information has been identified as confidential only orally, it will be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

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

The beneficiaries may disclose confidential information to their personnel or third parties involved in the action only if they:

(a) need to know to implement the Agreement and

(b) are bound by an obligation of confidentiality.

This does not change the security obligations in Article 37, which still apply.

The Commission may disclose confidential information to its staff, other EU institutions and bodies.

It may disclose confidential information to third parties, if:

 (a) this is necessary to implement the Agreement or safeguard the EU's financial interests and

(b) the recipients of the information are bound by an obligation of confidentiality.

Under the conditions set out in Article 4 of the Rules for Participation Regulation No 1290/2013, the Commission must moreover make available information on the results to other EU institutions, bodies, offices or agencies as well as Member States or associated countries.

The confidentiality obligations no longer apply if:

(a) the disclosing party agrees to release the other party;

(b) the information was already known by the recipient or is given to him without obligation of

confidentiality by a third party that was not bound by any obligation of confidentiality;

(c) the recipient proves that the information was developed without the use of confidential information;

(d) the information becomes generally and publicly available, without breaching any confidentiality obligation, or

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

**36.2 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

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

**ARTICLE 38 — PROMOTING THE ACTION — VISIBILITY OF EU FUNDING**

**38.1 Communication activities by beneficiaries**

**38.1.1 Obligation to promote the action and its results**

The beneficiaries must promote the action and its results, by providing targeted information to multiple audiences (including the media and the public) in a strategic and effective manner.

This does not change the dissemination obligations in Article 29, the confidentiality obligations in Article 36 or the security obligations in Article 37, all of which still apply.

Before engaging in a communication activity expected to have a major media impact, the beneficiaries must inform the Commission (see Article 52).

**38.1.2 Information on EU funding — Obligation and right to use the EU emblem**

Unless the Commission requests or agrees otherwise or unless it is impossible, any communication activity related to the action (including in electronic form, via social media, etc.) and any infrastructure, equipment and major results funded by the grant must:

(a) display the EU emblem and

(b) include the following text:

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

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

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

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

**38.1.3 Disclaimer excluding Commission responsibility**

Any communication activity related to the action must indicate that it reflects only the author's view and that the Commission is not responsible for any use that may be made of the information it contains.

**38.2 Communication activities by the Commission**

**38.2.1 Right to use beneficiaries’ materials, documents or information**

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

This does not change the confidentiality obligations in Article 36 and the security obligations in Article 37, all of which still apply.

If the Commission’s use of these materials, documents or information would risk compromising legitimate interests, the beneficiary concerned may request the Commission not to use it (see Article 52).

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

(a) **use for its own purposes** (in particular, making them available to persons working for the Commission or any other EU institution, body, office or agency or body or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers);

(b) **distribution to the public** (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);

(c) **editing or redrafting** for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation);

(d) **translation**;

(e) giving **access in response to individual requests** under Regulation No 1049/200125, without the right to reproduce or exploit;

(f) **storage** in paper, electronic or other form;

(g) **archiving**, in line with applicable document-management rules, and

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

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

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

**38.3 Consequences of non-compliance**

If a beneficiary breaches any of its obligations under this Article, the grant may be reduced (see Article 43).

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

**ARTICLE 46 — LIABILITY FOR DAMAGES**

**46.1 Liability of the Commission**

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

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

**46.2 Liability of the beneficiaries**

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

1. [↑](#footnote-ref-1)