

SUBCONTRACT TO GRANT AGREEMENT N° 732463 — OPENREQ

BETWEEN

HAMBURGER INFORMATIK TECHNOLOGIE-CENTER HITEC E.V. (HITEC) EV,
VR15499, established in VOGT KOLLN STRASSE 30, HAMBURG 22527, Germany, VAT
number DE211109694, represented for the purposes of signing the subcontract by Wiebke
Frauen and Dr. Lothar Hotz

- hereinafter referred to as "**HITeC**" -

AND

NAME:
ADDRESS:
POSITION:
REGISTER:
VAT NO:

- hereinafter referred to as "[**SUBCONTRACTOR**]"

WHEREAS

- A.** The European Union ("*the Union*"), represented by the European Commission ("*the Commission*"), has concluded the grant agreement n° 732463 — OPENREQ on [DATE OF LAST SIGNATURE OF THE PARTIES] funded under H2020-EU.2.1.1. - INDUSTRIAL LEADERSHIP - Leadership in enabling and industrial technologies - Information and Communication Technologies (ICT) to which HITeC has acceded for the purpose of conducting research concerning "Intelligent Recommendation Decision Technologies for Community-Driven Requirements Engineering", hereinafter called the "Research Project" or "OPENREQ". OPENREQ addresses the challenging objective of creating a platform of services to semi-automatically support collaborative decision-making in large software projects. The focus is on Requirements Engineering-related decisions, such as requirement quality improvement, release planning, and requirements reuse. [SUBCONTRACTOR] wants to integrate, extend, and evaluate OpenReq technologies for tools, processes, and use cases of their interest.
- B.** It is the intention that part of the Research Project should be carried out on behalf of HITeC by [SUBCONTRACTOR] under the terms and conditions required by the grant agreement n° 732463 in respect of subcontracted research or development and set out in these documents, notably Article 13 concerning subcontracting.

If this subcontract conflicts with the in Annex 1 enclosed Articles of the grant agreement n° 732463, the latter shall prevail.

- C.** [SUBCONTRACTOR] will develop application(s) and perform evaluations for the Research Project, and might extend the envisioned pilots, and implement new use cases demonstrating the potential of the Research Project and its real-world application to different domains. In particular, the aim is to help to integrate OPENREQ recommendation capabilities into state-of-the-art commercial and open-source tools. To incorporate OPENREQ into [SUBCONTRACTORS] own tools to cover a wide spectrum of applications, such as integrated development environments (e.g. Eclipse, Net-

Beans...), ticket systems (Bugzilla, GitHub issues, Redmine), project management tools (Jira, MS Project), communication tools (email clients, forum), modelling tools, build infrastructure, etc.

- D. [SUBCONTRACTOR] accepts that, in undertaking research under subcontract to HITeC in respect of grant agreement n° 732463, it is bound by the terms and conditions of the in Annex 1 enclosed articles of the grant agreement n° 732463 in so far as they relate to the requirements set out in this subcontract. [SUBCONTRACTOR] recognises that HITeC has certain obligations to *the Union* in respect with the administration and reporting of technical progress on the Research Project and will maintain and provide such necessary documentation as requested in this subcontract.
- E. [SUBCONTRACTOR] will take any actions necessary to ensure that the confidentiality of the work is maintained.

IT IS THEREFORE AGREED THAT:

1. THE SUBCONTRACT WORK

[SUBCONTRACTOR] will carry out the work set out in the Technical Annex to this subcontract and in accordance with the timetable specified thereto, subject to such alterations as may be mutually agreed in writing. Reports on the progress of the research will be made to HITeC in accordance with paragraph 4. "Reporting" of this subcontract.

2. FINANCIAL MODALITIES

2.1 The amount of the price of the subcontracted work will be EUR [AMOUNT] plus VAT if applicable.

[SUBCONTRACTOR] will ask for payment of the subcontract work by submitting an invoice or invoices to HITeC at the address indicated above. The payments will be made after HITeC received an invoice and according to the following schedule:

- a) 20 % of the amount mentioned in paragraph 2.1 shall be due for payment after the subcontract enters into force, and
- b) 80 % after delivery and acceptance of the results (see Technical Annex).

2.2 The [SUBCONTRACTOR] may be audited. The [SUBCONTRACTOR] shall therefore in case of an audit accept to be audited in compliance with Articles 22 (checks, reviews, audits and investigations – extension of findings) and Article 23 (evaluation of the impact of the action) of the grant agreement n° 732463 by *the Commission* or its authorised representative or the European Court of Auditors (ECA) or its authorised representative and the European Anti-Fraud Office (OLAF) or its authorised representative (see Annex 1).

2.3 In the event of a lawful reclaiming of the subsidy amount by HITeC, the [SUBCONTRACTOR] is not entitled to invoke the loss of enrichment in accordance with sec. 818 par. 3 BGB (German Civil Code). This applies regardless of whether the financial support provided to the entity/subcontractor was lawful or unlawful.

3. CONDUCT OF THE PROJECT WORK

- 3.1 [SUBCONTRACTOR] is responsible for ensuring that the conduct of the research work is to the required standards, is undertaken by the appropriate personnel and is carried out within the financial provisions and the timetable, if appropriate, or as may otherwise be mutually agreed in writing.
- 3.2 [SUBCONTRACTOR] must not subcontract any part of the work.
- 3.3 All documents of whatever kind compiled during the course of the work on the Research Project will be held at the disposal of HITeC and *the Union* throughout the period of the grant agreement n° 732463 and for five years thereafter.

4. REPORTING

4.1 [SUBCONTRACTOR] will generally keep HITeC informed of the progress and results of the work performed. [SUBCONTRACTOR] will provide HITeC on [DATE] the latest with the written results and reports described in the Technical annex under 2. (I) of this subcontract. Furthermore [SUBCONTRACTOR] will present the result as described in the Technical annex under 2. (I).

4.2 TIMETABLE
[OPTIONAL]

4.3 On the finished product and any related website or materials, the [SUBCONTRACTOR] must use the “Made with OpenReq” logo.

5. CONFIDENTIALITY

[SUBCONTRACTOR] will take all necessary steps to ensure that the requirements of the grant agreement n° 732463 in respect of the confidentiality (Annex 1: Article 36 of the grant agreement n° 732463) and security of information, the protection of intellectual property and copyright arising from the research are observed by its staff, employees or any other person acting on its behalf who may have the opportunity of acquiring information relating to the Research Project. [SUBCONTRACTOR] will also keep this subcontract confidential.]

6. INTELLECTUAL PROPERTY RIGHTS

6.1 If [SUBCONTRACTOR] works on a existing OPENREQ-component [DEFINITION] any results or intellectual property rights generated by the work carried out by [SUBCONTRACTOR] under this subcontract will be licensed to HITeC on a royalty-free basis to enable HITeC to unrestrictedly and freely use, distribute and reproduce the results, including the code base and the source code developed by [SUBCONTRACTOR] according to the Eclipse Public License [VERSION] .An OpenReq component is any software (executable and source code) developed by any of the partners during the project.

If the ownership of the intellectual property or copyrights cannot be transferred, HITeC will obtain all necessary rights on a royalty-free basis from the [SUBCONTRACTOR] in order to unrestricted use the intellectual property or copyrights and be able to fully respect its obligations under the grant agreement n° 732463, this includes access to the code base and the unrestricted licensing of the source code developed by the [SUBCONTRACTOR]. This might also require the [SUBCONTRACTOR] to grant

licences to exploit the result and intellectual property rights to the other beneficiaries of the grant agreement n° 732463.

6.2 The [SUBCONTRACTOR] retains the ownership of the intellectual property rights or copyrights on the results that are generated by him within the Research Project if he works on own subcontractor components. HITeC will obtain all necessary rights on a royalty-free basis from the [SUBCONTRACTOR] in order to use the intellectual property or copyrights and to be able to fully respect its obligations under the grant agreement n° 732463, this includes access to the source code developed by the [SUBCONTRACTOR] for evaluation and use it for internal research and teaching and also for research projects with third parties. HITeC will not commercially distribute or sell the source code. The grant agreement n° 732463 might also require the [SUBCONTRACTOR] to grant licences to exploit the result and intellectual property rights to the other beneficiaries of the grant agreement n° 732463. A “own subcontractor component” is any software (including executable and source code) which does not include an “OpenReq component” (as defined in 6.1).

7. AMENDMENTS

Any amendment to the subcontract in respect of notably objectives, timetable or costs will be determined by mutual agreement and will be subject to confirmation in writing by HITeC.

8. DURATION

8.1 This agreement takes effect the [DATE] and the project work will be deemed to have started on that date.

8.2 This agreement will remain in force throughout the life of grant agreement n° 732463, terminating on [DATE].

9. PUBLICATION

9.1 HITeC has the right to freely publish the results of the Research Project and all objectives (source code, data, reports etc. (see the Technical annex) and the identity of the [SUBCONTRACTOR] unless otherwise stated in this paragraph.

9.2 Only for work results that include source code or data of [SUBCONTRACTOR] own components (see paragraph 6.2 of the subcontract) which are intended for publication HITeC undertakes to submit, at least 30 (thirty) days prior to the written disclosure, to [SUBCONTRACTOR] for the inspection and approval. Such approval may be withheld only for good cause. If the [SUBCONTRACTOR] does not respond to HITeC within 30 (thirty) days of receipt of such work results, he is deemed to have given consent to the publication disclosure.

The source code that is build within OPENREQ or an OPENREQ component (see paragraph 6.1) can freely be published by HITeC without the approval of [SUBCONTRACTOR].

10. PLACE OF PERFORMANCE OBLIGATION

[SUBCONTRACTOR] must ensure that its majority of the research and development work is located in the EU Member States or associated countries.

11. CONFLICT OF INTERESTS AND PROMOTING THE ACTION — VISIBILITY OF EU FUNDING etc

[SUBCONTRACTOR] will especially observe and comply with the obligation to avoid a conflict of interests (see Annex 1: Article 35 of grant agreement n° 732463) and with the regulations for promoting the action and give visibility to the EU funding (see Annex 1: Article 38 of the grant agreement n° 732463).

12. TERMINATION

This Agreement can be terminated by either party subject to a period of notice being given that is not less than three months from the date of written notice of such termination.

13. APPLICABLE LAW AND COMPETENT COURT

13.1 This Agreement will be subject to the Law of Germany.

13.2 Any dispute between the parties arising from the interpretation or application of the provisions of this subcontract which cannot be settled amicably shall be brought before the court of Hamburg.

14. LIABILITY

The [SUBCONTRACTOR] shall have sole responsibility for complying with any legal obligations incumbent on him.. [Subcontractor] will observe the regulations concerning the liability of the Commission (see Annex 1: Article 46 — LIABILITY FOR DAMAGES of the grant agreement n° 732463).

15. NO CONTRACTUAL RELATIONSHIP

[Subcontractor] has no rights or obligations towards *the Commission* or the other beneficiaries (but see paragraph 6 of this subcontract) of the grant agreement n° 732463 and has no contractual relation with them.

16. ANNEXES

The Annexes forming an integral part of this subcontract are:

Technical annex: Objectives and conduct of the Research Project

Annex 1: Articles of grant agreement n° 732463 — OPENREQ

17. SPECIAL CONDITIONS

[Optional - Special conditions to be agreed between Contracting parties].

Date

Signed on behalf of
[SUBCONTRACTOR]

.....

Date

**Signed on behalf of
HITeC**

.....

Technical Annex

Objectives and conduct of the Research Project

1. OBJECTIVES AND PROGRAMME

The work to be undertaken by [SUBCONTRACTOR] under this Subcontract is set out in this Technical Annex.

2. THE WORK OF THE SUBCONTRACT

The subcontract work will be carried out in stages, the objective and programme of the research being as set out below:

(I) OBJECTIVE

[SUBCONTRACTOR] will assist in achieving the overall objectives as stated in the Technical Annex for the project.

At the end of the project period, the [SUBCONTRACTOR] will deliver the following results:

- Running software binary (and source code where applicable according to the selected license).
- User documentation, including, how to run the software and how to use its functionalities (Swagger format documentation is also expected in case API are produced).
- Dataset used for the implementation and evaluation of the solution (if applicable).
- Project report (~10 pages) containing a short description of the development activities, results of the feedback and evaluation activities, description and results of the dissemination activities. Note that possible deviations from the original proposal should also be reported.
- Brief report of cost claim.
- Present the results during one of the OPENREQ meetings hosted by the consortium in 2019 (date, location, and participation conditions will be communicated per time). [SUBCONTRACTOR] will give a presentation/demo of approximately 20 minutes.

(II) PROGRAMME

The programme of work to be undertaken by [SUBCONTRACTOR] will comprise:

[.....]

3. CONDUCT AND REGULATION OF THE WORK

The general conduct of the project work will be co-ordinated by [CONTACT PERSON] of HITeC who will maintain contact with [CONTACT PERSON] of [SUBCONTRACTOR] such that HITeC is kept fully informed of the results obtained.

4. ALTERATION TO THE PROGRAMME OF RESEARCH

Any alteration to the content and timetable of the Research Project, within the life of the grant agreement n° 732463, can only be made by mutual agreement and is subject to formal written approval by HITeC. Should it be decided that completion of the work would require that the timescale be extended beyond the original termination date of

grant agreement n° 732463 approval can only be given by HITeC if such extension is sanctioned by *the Union*.

5. **MANNING**

[SUBCONTRACTOR] undertakes to provide the necessary staff of the appropriate qualified status and experience to ensure the proper conduct of the research and its completion within the time span allotted, [in accordance with paragraph 4.2].

ARTICLE 13 — IMPLEMENTATION OF ACTION TASKS BY SUBCONTRACTORS

13.1 Rules for subcontracting action tasks

13.1.1 If necessary to implement the action, the beneficiaries may award subcontracts covering the implementation of certain action tasks described in Annex 1. Subcontracting may cover only a limited part of the action. The beneficiaries must award the subcontracts ensuring the best value for money or, if appropriate, the lowest price. In doing so, they must avoid any conflict of interests (see Article 35). The tasks to be implemented and the estimated cost for each subcontract must be set out in Annex 1 and the total estimated costs of subcontracting per beneficiary must be set out in Annex 2.

The Commission may however approve subcontracts not set out in Annex 1 and 2 without amendment (see Article 55), if:

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

The beneficiaries must ensure that the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 22 and 23 also towards their subcontractors.

13.1.2 The beneficiaries must ensure that their obligations under Articles 35, 36, 38 and 46 also apply to the subcontractors.

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

13.2 Consequences of non-compliance

If a beneficiary breaches any of its obligations under Article 13.1.1, the costs related to the subcontract concerned will be ineligible (see Article 6) and will be rejected (see Article 42). If a beneficiary breaches any of its obligations under Article 13.1.2, the grant may be reduced (see Article 43). Such breaches may also lead to any of the other measures described in Chapter 6.

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 883/2013 and No 2185/96 (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 161 of the Financial Regulation No 966/2012, 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.

22.4 Checks, reviews, audits and investigations for international organisations

Not applicable

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:

For communication activities: *"This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 732463".*

For infrastructure, equipment and major results: *"This [infrastructure][equipment][insert type of result] is part of a project that has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 732463".*

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 1049/2001, without the right to reproduce or exploit;

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

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

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

If the right of use is subject to rights of a third party (including personnel of the 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:

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

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.