

Third Party Agreement

This Third Party Agreement, hereinafter the “Third Party Agreement”, shall be valid (retroactively) from < agreed date> (“Effective Date”).

BETWEEN:

Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., with registered office at Hansastraße 27c, 80686 München, Germany, registration no. VR 4461 (Amtsgericht München),

acting as legal entity for its

Fraunhofer-Institut für Graphische Datenverarbeitung IGD, Darmstadt, Germany

(“Fraunhofer”);

and

XXX, with registered office at XXX,
hereinafter referred to as “Third Party 1”;

and

XXX, with registered office at XXX,
hereinafter referred to as “Third Party 2”;

and

XXX, with registered office at XXX,
hereinafter referred to as “Third Party 3”;

etc.

- Third Party 1-X hereinafter also individually referred to as “Third Party” or jointly referred to as “Third Parties” -

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

WHEREAS:

Together with other Beneficiaries, Fraunhofer has been awarded a Grant Agreement by the European Commission (Funding Authority) no. 768892 entitled »CloudiFacturing«, hereinafter referred to as the “Grant Agreement”. From this Grant Agreement including its Annexes certain rights and obligations result between the Funding Authority, Fraunhofer and the other CloudiFacturing Beneficiaries. The

Grant Agreement states that third parties will be selected and financially supported for certain work to the project.

Whereas Fraunhofer will provide financial support to the Third Party(ies) according to the provisions of the Grant Agreement for the Third Party's services to the project. Under the Grant Agreement, the CloudiFacturing Beneficiaries are required to ensure that the CloudiFacturing Project is implemented in compliance with the provisions of the Grant Agreement; and the Parties shall comply with this in implementation of their tasks. The CloudiFacturing Beneficiaries furthermore are entering into a Consortium Agreement by which they have obligations towards each other. The Third Party shall not do anything or omit to do anything which renders Fraunhofer or the other CloudiFacturing Beneficiaries in breach of the Grant Agreement or the Consortium Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules of Participation for Horizon 2020 or in the Grant Agreement or Consortium Agreement, including their respective Appendixes.

2 Subject

- 2.1 The Third Party(ies) will perform the work as defined in this Third Party Agreement, the Grant Agreement, the Guide for Applicants (attached to this Third Party Agreement as Appendix 4), as offered by the Third Party(ies) and finally agreed with Fraunhofer. The offer(s) of the Third Party(ies) are attached to this Third Party Agreement as Appendix 1.
- 2.2 The Third Party(ies) shall be responsible for ensuring that the work is carried out and complies with accepted technical, scientific and professional standards, is undertaken by appropriate personnel and carried out in accordance with the schedule laid down in Article 3 and the financial provisions laid down in Article 4.
- 2.3 Each Third Party assumes all responsibility towards Fraunhofer for all tasks contracted to it by this Third Party Agreement and shall indemnify and hold harmless Fraunhofer in case of breach of its obligations.
- 2.4 Additionally, each Third Party recognizes that Fraunhofer and the other CloudiFacturing Beneficiaries are bound by certain obligations arising out of the Grant Agreement and the CloudiFacturing Consortium Agreement. Herewith, each Third Party agrees to comply with all obligations arising out of the Grant Agreement and the CloudiFacturing Consortium Agreement to the extent that Fraunhofer and the other CloudiFacturing Beneficiaries are enabled to comply with all their obligations under those agreements.
- 2.5 Each Third Party accepts the Terms and Conditions of the Grant Agreement and of the CloudiFacturing Consortium Agreement insofar as they relate to the tasks which are contracted to it hereby. The principal Terms and Conditions of the Grant Agreement are attached as Appendix 2 to this Third Party Agreement.

Third Party Agreement

3 Duration

3.1 The ClouDiFacturing Project has started on 1 October 2017 with a duration of 48 months. This Third Party Agreement will be effective from the Effective Date first mentioned above and will be valid as long as the Grant Agreement. Should the period of validity of the Grant Agreement be amended, this Third Party Agreement shall be deemed automatically changed accordingly.

The Third Party(ies) 1,2,3... shall commence to perform their activities according to Annex 1 on <date> and shall have completed it on <date>. By that date all results and reports shall have been delivered to Fraunhofer.

3.2 Each Third Party shall notify Fraunhofer in writing without undue delay if it becomes apparent that it might be unable to keep the schedule.

3.3 Fraunhofer can terminate this Agreement with immediate effect through written notice to the Third Party:

- if the Third Party is in breach of any of its material obligations under this Third Party Agreement, which breach is not remediable, or, if remediable, has not been remedied within thirty (30) days after expiration of the red-flag period (see chapter 7.5 of Guide for Applicants, Appendix 4) and after written notice to that effect from the party not in breach,
- if, to the extent permitted by law, the Third Party is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with its creditors, has suspended business activities, or is the subject of any other similar proceeding concerning those matters, or
- if the Third Party is subject to an event of Force Majeure (in accordance with how that term is defined under Article 51 of the Grant Agreement), which prevents the Third Party from correct performance of its obligations hereunder and such circumstances have lasted, or can reasonably be expected to last more than six (6) weeks.

4 Financial Provisions

4.1 The tasks allocated to the Third Party(ies) are based on the following funding indicated in the table:

Third Party 1: _____ €

Third Party 2: _____ €

Third Party 3: _____ €

The financial support will be paid to the Third Party(ies) in instalments according to the Guide for Applicants, as follows:

After contract signature, Fraunhofer will issue a partial pre-payment (15%) of the funding to each Third Party for the first quarter of the experiment, avoiding cash flow problems especially for SMEs.

After acceptance of the first quarterly progress report, additional 10% of the funding are transferred as pre-payment.

After acceptance of the second, third, and fourth quarterly progress report respectively, additional 20% of the funding are transferred as pre-payment.

These pre-payments are 'loans' given to each Third Party until the corresponding work is accepted after review, respectively audit, by the Funding Authority.

The remaining 15% are only granted after the completion of the application experiment, the participation of the Third Party, or, in case of more than one Third Party, of the experiment leader (Third Party 1) at the corresponding project review, and the acceptance of the experiment work, results and deliverables by the Funding Authority.

In case of a non-acceptance, the Third Parties have to comply with the Funding Authority's recommendations and get the final payment only after satisfying the recommendations.

Any financial re-claims of the Funding Authority in case of irregularities within the experiments' cost statements will be forwarded to the respective Third Party.

Each payment request must include detailed information on the Third Party's spending e.g. costs for travel/accommodation, consumables and equipment. The awarding of costs will be made according to the Guide for Applicants (Appendix 4).

At the time a payment request is submitted, written documentation must be provided to Fraunhofer for the completion and proper implementation of the corresponding deliverable and/or progress.

All payment requests regarding this Third Party Agreement must be submitted to Fraunhofer by DDMMYYYY at the latest.

The lead applicant (Third Party 1) is responsible for submitting all the required documentation and payment requests on behalf of the other Third Parties. The payment requests must clearly indicate the spendings per Third Party. Upon approval by Fraunhofer, funding will be transferred in separate instalments to each Third Party. .

Each Third Party shall account for its costs in accordance with said Article 15 in its own responsibility.

4.2. Fraunhofer is entitled to withhold any payments due to a Third Party

- a) identified by the Partners of the ClouDiFacturing Consortium to be in breach of its obligations under this Agreement, or
- b) who has not yet signed this Third Party Agreement.

Fraunhofer is entitled to recover any payments already paid to a defaulting Third Party.

Fraunhofer is equally entitled to withhold payments to a Third Party when this is suggested by or agreed with the Funding Authority.

4.3 The budget in Annex 2 of the Grant Agreement, including all amendments which may occur throughout the project duration, shall apply to this Third Party Agreement as far as the tasks allocated to the Third Party(ies) are affected. Where budget amendments are to be discussed in

the CloudiFacturing Consortium, Fraunhofer shall always duly respect the Third Partys' interests and shall give the Third Party(ies) the opportunity to bring forward its attitude.

- 4.4 Fraunhofer shall receive by the Funding Authority all payments for the costs stated by the Third Party(ies) and shall forward them on to a Third Party's bank account stated in Appendix 3 after approval of the costs in accordance with this Third Party Agreement and the Grant Agreement.

5 Organisation and Performance of the Work

5.1 Technical and Financial Responsibility

The Third Party(ies) shall provide all personnel, facilities, equipment and materials necessary for the proper performance of this Third Party Agreement and shall assume the technical and financial responsibility for the work specified in Appendix 1. Each Third Party undertakes to indemnify Fraunhofer and/or other CloudiFacturing Beneficiaries against any failure on its part to discharge its aforementioned responsibilities.

5.2 Technical and Financial Control, Verification, Audits

Each Third Party undertakes to supply Fraunhofer and/or other CloudiFacturing Beneficiaries without delay with any information which the latter may request concerning the implementation of this Third Party Agreement. In particular, upon request the Third Party shall make available to Fraunhofer, the other CloudiFacturing Beneficiaries and to their auditors the technical and financial documents verifying the costs and that the work is being or has been carried out. Each Third Party acknowledges and accepts the rights of the Funding Authority relating to controls and audits laid down in Articles 22 and 23 of the Grant Agreement.

Each Third Party undertakes to give the representatives of Fraunhofer reasonable access to the premises where the work is being carried out and to all documents concerning the work programme and/or necessary to verify the compliance with the obligations arising from this Third Party Agreement and of the Grant Agreement including its Annexes. Additionally, the Third Party acknowledges and accepts the rights of the European Commission and/or its agencies, the Court of Auditors or any third party authorised by the European Commission and/or its agencies relating to the technical and financial or other verification of this Third Party Agreement laid down in Articles 22 and 23 of the Grant Agreement.

- 5.3 Each Third Party fully accepts the provisions of Articles 35, 36, 38, 39 and 46 of the Grant Agreement, as attached.

6 Results

6.1 Ownership of Results

Results are owned by the Party or the CloudiFacturing Beneficiary that generates them.

6.2 Joint ownership

Where Results are generated from work carried out jointly by the Parties to this Third Party Agreement or by the Third Party(ies) and CloudiFacturing Beneficiaries 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 Third Party(ies) and the CloudiFacturing Beneficiaries 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, the division of related costs and exploiting such jointly owned Results 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 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:
 - (a) at least 45 calendar days advance notice; and
 - (b) compensation under Fair and Reasonable conditions.

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

7 Access Rights

Each Third Party shall grant a non-exclusive, royalty-free, transferable and unlimited right of use with the right for sub-licensing to Fraunhofer and the other CloudiFacturing Beneficiaries for implementation of the CloudiFacturing Project with regard to all results achieved by the Third Party in the course of the work according to this Third Party Agreement ("Third Party Results") and the Background of the Third Party related to these Third Party Results. If Fraunhofer and/or the other CloudiFacturing Beneficiaries need to use Third Party Results and/or the related Background of a Third Party for use or commercial exploitation of their own Results of the CloudiFacturing Project, each Third Party shall grant a non-exclusive, transferable right of use with regard to Third Party Results and related Background based on Fair and Reasonable Conditions.

The Third Party shall use all reasonable endeavours to ensure the accuracy of all information and data provided by it to Fraunhofer and/or other CloudiFacturing Beneficiaries under this Third Party Agreement, whether they are Third Party Results or not and whether they are protected by intellectual property rights or not, and warrants its right to disclose such information. In the event of any error or omission in the Third Party Results being brought to the attention of the Third Party by Fraunhofer or the other CloudiFacturing Beneficiaries, the Third Party undertakes to correct such error or rectify such omission promptly, during which time Fraunhofer shall be entitled to withhold payment of any sums due to the Third Party.

The Third Party warrants that the Results and any information provided by it under this Third Party Agreement shall not infringe the intellectual property rights of any third party, and shall indemnify Fraunhofer and the other CloudiFacturing Beneficiaries fully and effectively from any and all liabilities, costs expenses, howsoever arising from breach of this warranty.

8 Dissemination

Each Party agrees that any dissemination activity (including publications, presentations or contributions to any standards organisation) by the Third Party is subject to the prior written approval of Fraunhofer and the other CloudiFacturing Beneficiaries.

Fraunhofer and the other CloudiFacturing Beneficiaries are entitled to include the main issues and information regarding the Third Party' work in their reporting towards the European Commission, subject to prior written notification to the Third Party.

9 Confidentiality

All information in whatever form or mode of communication, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with this Third Party Agreement and the tasks of the Third Party(ies) 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, is "Confidential Information".

The Recipients hereby undertake for a period of 4 years after the termination of this Third Party Agreement:

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

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

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

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

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

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

The same obligations on confidentiality apply to the Third Party who is receiving Confidential Information by the other ClouDiFacturing Beneficiaries.

10 Reports and Deliverables

- 10.1 Each Third Party agrees to submit progress reports to Fraunhofer, the responsible Digital Innovation Hub (DIH) xxx and the responsible work package leader of the ClouDiFacturing Beneficiaries to enable Fraunhofer and/or the other ClouDiFacturing Beneficiaries to include all contents directly into the project reporting, and to identify work performed and resources deployed by the Third Party(ies). Fraunhofer also reserves the right to forward the report of the Third Party directly to the Funding Authority.

10.2 The contents and format of the various reports required will be agreed between Fraunhofer and/or other CloudiFacturing Beneficiaries and the Third Party based on the conditions of the Grant Agreement.

11 Liability

11.1 Fraunhofer's liability

The contractual liability of Fraunhofer under this Third Party Agreement shall in any case be limited to the amount of the financial support provided or to be provided to the Third Party hereunder. Fraunhofer shall not in any case be liable for any indirect or consequential damages such as:

- loss of profits, interest, savings, shelf-space, production and business opportunities;
- lost contracts, goodwill, and anticipated savings;
- loss of or damage to reputation or to data;
- costs of recall of products; or
- any other type of indirect, incidental, punitive, special or consequential loss or damage.

This limitation of liability shall not apply in cases of wilful act or gross negligence.

11.2 Liability between Third Party, Fraunhofer and the other CloudiFacturing Beneficiaries

The Third Party shall fully and exclusively bear the risks in connection with the work provided by it and for which financial support is granted and forwarded by Fraunhofer. The Third Party shall indemnify Fraunhofer and the other CloudiFacturing Beneficiaries for all damages, penalties, costs and expenses which Fraunhofer or a CloudiFacturing Beneficiary as a result thereof would incur or have to pay to the European Commission or to any third parties with respect to the Third Party's work financially supported and/or for any damage in general which Fraunhofer or the CloudiFacturing Beneficiaries incur as a result thereof.

In addition, should the European Commission have a right to recovery against Fraunhofer regarding the financial support granted under this Third Party Agreement, the Third Party shall pay the sums in question in the terms and the date specified by Fraunhofer.

Moreover, the Third Party shall indemnify and hold Fraunhofer and the CloudiFacturing Beneficiaries, 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.

Should any CloudiFacturing Beneficiary make any claim towards Fraunhofer under Fraunhofer's overall responsibility for the Third Party(ies)' tasks in accordance with Article 15 in the Grant Agreement, the Third Party shall indemnify and hold harmless Fraunhofer from any costs.

12 Miscellaneous

12.1 Attachments, inconsistencies and severability

In case the terms of this Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail.

Should any provision of this Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

The Clauses 6, 7, 8, 9, 11 remain valid also after expiration or termination of this Third Party Agreement.

12.2 No representation, partnership or agency

No Party shall be entitled to act or to make legally binding declarations on behalf of any other Party. Furthermore, a Third Party shall not be entitled to act or to make legally binding declarations on behalf of any of the CloudiFacturing Beneficiaries. Nothing in this Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

12.3 Mandatory national law

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

12.4 Language

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

12.5 Applicable law and settlement of disputes

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

The Parties shall endeavour to settle their disputes amicably. If the Parties mutually agree, by mediation.

If the Parties do not come to an amicable settlement, any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to the courts of the city of Brussels. They have exclusive jurisdiction.

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

Signatures

AS WITNESS:

The Parties have caused this Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Fraunhofer as Coordinator in the CloudiFacturing Project

Signature(s)

Name

Title

Date

Third Party Agreement

Third Party 1

Signature(s)

Name

Title

Date

Third Party Agreement

Third Party 2

Signature(s)

Name

Title

Date

Third Party Agreement

Third Party 3

Signature(s)

Name

Title

Date

etc

Third Party Agreement

Appendix 1 - Offers of the Third Party(ies)

Third Party Agreement

Appendix 2 – Excerpts from the Grant Agreement – principal Terms and Conditions:

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

22.1 Checks, reviews and audits by the Agency and 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 39 and No 2185/9640 (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 *Agency or 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 *Agency* 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 768892”.

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 768892”.

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 the 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 that it receives 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 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:

“© – [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.

Appendix 3

Banking Information Form

Information of each Third Party concerning the Third Party Agreement relating to CludiFacturing,
Grant Agreement No.: 768892

(see next page)

Third Party Agreement

Proposal / Contract Number GA No. 768892	008-323349	Proposal/Contract Acronym (Name)	ClouDiFacturing
Financial Information for payments			
<ul style="list-style-type: none"> ☞ Please ensure that the following information is correct, otherwise the payment may be rejected. ☞ Complete the form on your PC and not by hand, since unreadable information might cause delays. ☞ If a change of this Financial Information is necessary please inform the Coordinator immediately! Any costs and be incorrect or invalid Financial Information will be borne by the Third Party. 			

Account holder	
Name of Account holder (as regi	
Full address of account holder (as registered with the bank)	
Street name and number	
Postal Code	Town/City
Country	VAT number
Contact person of the account holder regarding the payments	
Name	
Phone	
e-mail	

Bank-Information	
Bank name	
Branch address (full address – PO box not accepted)	
Street name and number	
Postal Code	Town/City
Country	
Account no	
Bank sorting code	
International Bank Account Nun	The IBAN is mandatory for all European Partners. Where no IBAN bank-fees are charged to the partners. See also http://www.ecbs.o
BIC/SWIFT	
Requested »reason for payment« (if other than EU project name or n°) / Remarks	

We certify that above information declared is complete and true.

BANK STAMP + SIGNATURE BANK REPRESENTATIVE* (Obligatory)

DATE, STAMP + SIGNATURE of ACCOUNT HOLDER (Obligatory)

Appendix 4

Guide for Applicants – CloudiFacturing Open Call 2

Third Party Agreement