

Annex 7

Open Call Beneficiary Agreement

OPEN CALL 1

Application submission starts on:

8 February 2022, 00:00 CET

Submission deadline:

8 April 2022, 17:00 CET

www.hosmartai.eu

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 101016834



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Contracting parties

INTRASOFT International S.A., established in Tour Bastion, Place du Champ de Mars 5/10, 1050, Bruxelles, Belgium, with VAT number BE0472324870, represented for the purpose of signing the Agreement by [LEGAL_REPRESENTATIVE], [LEGAL_REPRESENTATIVE_POSITION], Hereinafter referred to as the “Contractor”

and

FUNDACION INSTITUTO TECNOLÓGICO DE CASTILLA Y LEON, established in Calle López Bravo 70, 09001, Burgos, Spain, with VAT number ESG09226606, represented for the purpose of signing the Agreement by [LEGAL_REPRESENTATIVE], [LEGAL_REPRESENTATIVE_POSITION], Hereinafter referred to as the “Treasurer”

of the one part, and

[COMPANY_NAME], an SME organized under the laws of [COUNTRY], established in [LEGAL_ADDRESS], with VAT number [VAT_NUMBER], duly represented by [LEGAL_REPRESENTATIVE], [LEGAL_REPRESENTATIVE_POSITION],

Hereinafter referred to as the “Beneficiary”

of the other part

Hereinafter collectively referred to as the “Contracting Parties”

HAVE AGREED to the following terms and conditions including those in the following Annexes, which form an integral part of this HosmartAI Open Call #1 – INNOVATE for Tech Beneficiary Agreement (hereinafter referred as the “Contract”)

General Provisions

1. The European Commission (hereinafter referred as the “EC”) and the Contractor, as a member of the HosmartAI Consortium, have signed the Grant Agreement no 101016834 for the implementation of the project “Hospital Smart development based on AI” (Acronym: HosmartAI) within the framework of the Programme H2020-DT-2018-2020/H2020-DT-2020-1.
2. The Beneficiary has received the favourable resolution by the external evaluators and therefore is entitled to receive funding and services according to the terms and conditions set out under this Beneficiary Agreement and in accordance with the Annex 2: Guidelines for Applicants.
3. This Contract aims at defining the framework of rights and obligations of the Contracting Parties.
4. The funds received by the Beneficiary are property of the EC. The Contractor and the Treasurer are mere holders and managers of the funds.

Definitions

1. **Open Call Committee** (OCC) consists of representatives of the Consortium Members.
2. **INNOVATE** is the 6-month programme after the Open Call, where the approved 3rd-party project is active under the sprint 1, sprint 2 and sprint 3 phases with activities leading to design, develop and integrate technology to the HosmartAI ecosystem. The detailed plan

mandatory to be executed under this agreement during INNOVATE is the proposal following Annex 3.1 Description of Work, submitted by the SME and improved by comments from evaluators if recommended.

3. **Results** means any (tangible or intangible) output of the INNOVATE 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 INNOVATE, as well as any rights attached to it, including intellectual property rights.
4. **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 INNOVATE 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 INNOVATE Programme by the owning Party or Consortium Member.
5. **Needed** means
 - for implementation of the INNOVATE and/or HosmartAI, 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.
6. **Confidential Information** means all 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 INNOVATE 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.

Article 1 - Entry into force & Termination of the contract

1.1 Entry into force

1. This Contract shall enter into force on the day of its signature by the last Contracting Party. The Contractor shall sign this contract, only after all of the following documents have been received from the Beneficiary:
 - The original signed Declaration of Honour (as given in Annex 4 of this Contract);
 - SME Declaration form (as given in Annex 5 of this Contract) or a validated PIC-number;
 - Copy of ID-card or Passport of legal representative(s) of the SME;
 - Copy of the original Extract of SME registration;
 - Proof of VAT registration;
 - Bank Information Form (as given in Annex 6 of this Contract).
2. All documents shall be sent to the Contractor first via email to the following email address: [to be delivered during contracting phase].

3. The Beneficiary is solely responsible for the accuracy of all data provided to the Contractor.

1.2 Contract Termination

1. This Contract covers all three phases (sprints) of HosmartAI INNOVATE for Tech activities and the following service maintenance phase of 12 months.
2. At the end of the aforementioned phases sprint #1, sprint #2 and sprint #3, an evaluation of the Beneficiary projects' progress will take place by the OCC as fully described in Annex 2 "Guidelines for Applicants".
3. In case the evaluators of the Beneficiary projects' progress do not receive or accept any due deliverable, at the end of the sprint #3 phase, this Contract is automatically terminated, and the Beneficiary fully accepts that no additional payments related to the phase of the missing or not accepted deliverable will be made by the Contractor.
4. This Contract also terminates in the event of unjustified withdrawal by the Beneficiary of the current fulfilment of its Contract obligations. "Unjustified withdrawal" covers any situation out of "Force Majeure" qualification which determines the absence of performance of the Beneficiary contractual obligations. In this particular case, it entitles the Contractor the right to claim the Beneficiary the full refund of all payments made to the Beneficiary up to date.

Article 2 – Obligations and Responsibilities of the Beneficiary

1. The obligations and responsibilities of the Beneficiary are defined in detail in the Annex 2 - Guidelines for Applicants.
2. Additionally, the Beneficiary shall take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, personal or any other interests liable to influence the impartial and objective performance of the Project. In case the Beneficiary is involved in a conflict of interest or in a risk of conflict of interest, the Beneficiary must formally notify this situation to the Contractor without delay and immediately take all the necessary steps to rectify this situation.

Article 3 – Breach of Contractual obligations

1. In the event of breach of the contractual obligations by the Beneficiary, the Contractor reserves the right to claim the Beneficiary the full refund of all payments made to the Beneficiary up to date. The breach of the contractual obligations by the Beneficiary shall be determined by the HosmartAI Consortium or HosmartAI Project Coordinator. Non-participation in the Contract activities (unless in the case of Force Majeure) or participating in the activities in a manner which intentionally disrupts the activities, shall be deemed as breach of the contractual obligations by the Beneficiary. The provision of false or misleading declarations by the Beneficiary or any unsolved situation of conflict of interest also constitute examples of breach of contractual obligations by the Beneficiary.

Article 4 – Financial contribution and Financial provisions

4.1 Maximum financial contribution

1. The maximum financial contribution to be granted by the Contractor to the Beneficiary shall not exceed the amount of Fifty Thousand Euros (50 000€).

4.2 Distribution of the financial contribution

1. The financial contribution to be granted to the Beneficiary shall be calculated and distributed in accordance with the provisions of the Annex 2: Guidelines for Applicants. In any case, the financial grant to be paid will always be subject to:
 - a. A favourable resolution by the evaluators and HosmartAI project responsible for assessing the Project in each of the phases;
 - b. Payments to the Beneficiary will be made by the Treasurer. In particular:
 - The Treasurer reserves the right to withhold the payments in case the Beneficiary does not fulfil with its obligations and tasks as per Annex 2 - Guidelines for Applicants;
 - Banking and transaction costs charged by any of the banks related to the handling of any financial resources made available to the Beneficiary by the Contractor shall be covered by the holder of the bank account which originated the cost. This means that the Contractor bears the cost of transfers charged by its bank and the Beneficiary bears the cost of transfers charged by its bank;
 - c. Payments will be released no later than thirty (30) natural days after the notification to the Treasurer;
 - d. 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 6 to this Agreement.
 - e. The Beneficiary is responsible for complying with any tax and legal obligations that might be attached to this financial contribution.

4.3 Payments schedule

1. The payment schedule is directly linked to the relevant phase of the Project as per the Guidelines for Applicants (Annex 2). [Final dates to be updated during the contracting phase]

Expected date of payment	Amount	Condition / Event	Linked Phase
September 2022	Up to € 17.500	Successful review of all due deliverables Participation in required remote event(s)	Sprint #1
November 2022	Up to € 17.500	Successful review of all due deliverables Participation in required remote event(s)	Sprint #2
January 2023	Up to € 15.000	Successful review of all due deliverables	Sprint #3

		Participation in required remote event(s) and Final Demo Event in a European city (subject to define)	
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- The Beneficiary is entitled to receive exclusively those payments allocated to each specific phase of the Project provided that the conditions under Article 4.2 are met.

Article 5 – Liability of the Beneficiary

- The Contractor, the Treasurer and/or the EC cannot be held liable for any acts or omissions of the Beneficiary in relation to this Contract. At the same time, the Beneficiary is responsible for any act or omission that causes damage to the Contractor, the Treasurer, the Data Provider, and/or the EC in relation to this Contract.
- The Beneficiary shall bear sole responsibility for ensuring that their acts within the framework of this Contract do not infringe third parties' rights. There is no joint liability between the Contracting Parties.

Article 6 - Confidentiality

- With respect to all information of whatever nature or form as is disclosed between the Contracting Parties in connection with the Contract and identified in writing as confidential, the terms of this Article shall apply.
- The Contracting Parties agree that such information is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information.
- Parties hereby undertake for a period of four years after the termination of this Agreement:
 - not to use Confidential Information otherwise than for the purpose for which it was disclosed;
 - to use confidential information only to implement the Agreement unless otherwise agreed between the Parties;
 - not to disclose Confidential Information to third parties 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 strictly 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 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.

Article 7 – Intellectual Rights and Exploitation

- The results developed during the Contract execution shall be owned by the Beneficiary unless explicitly otherwise specified. The Beneficiary commits to exploit the results at least via the HosmartAI marketplace.

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:

1. 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
2. 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. fair and reasonable compensation.
3. The joint owners shall agree on all protection measures and the division of related cost in advance.
4. The Beneficiary shall grant a non-exclusive, royalty-free, transferable and unlimited right of use with the right for sub-licensing to the HosmartAI Coordinator and the other Consortium Members for implementation of the HosmartAI project, including the INNOVATE with regard to all Results generated by the Beneficiary in the course of the work according to this Contract 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.
5. Access rights for the Beneficiaries on Results generated by the Consortium Partners, if needed for implementation of their own tasks in the INNOVATE, may be granted for the duration of the INNOVATE on royalty-free basis but strictly to the extent Needed to fulfil the 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 be made within 6 months after the end of the INNOVATE.
6. 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 INNOVATE, may be granted for the duration of the INNOVATE on royalty-free basis but strictly to the extent needed to fulfil the INNOVATE activities and tasks. The Consortium Member granting such access rights may require that a separate agreement on the Access rights is made.
7. For the sake of clarity, any Consortium Member involved in the INNOVATE cannot 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.
8. 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.

Article 7 – Force Majeure

1. “Force Majeure” shall mean, any unforeseeable exceptional situation or event beyond the Contracting Parties control, which prevents either of them from fulfilling any of their obligations under the Agreement, which was not attributable to error or negligence on their part and which proves to be inevitable in spite of the exercising all due diligence.
2. 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, as well as labour disputes, strikes or financial difficulties cannot be invoked as force majeure.
3. The Contracting Parties shall take the necessary measures to limit any damage due to force majeure. They shall do their best to resume the implementation of the action as soon as possible.
4. No Contracting Party shall be considered to be in breach of its obligations and tasks if such breach is caused by Force Majeure. A Contracting Party will notify the other Contracting Party of any Force Majeure as soon as possible. In case the Beneficiary is not able to overcome the consequences of Force Majeure within 10 (ten) days after such notification, the Contractor will decide accordingly including the termination of the Contract.

Article 8 – Information and communication

1. The Beneficiary must promote the INNOVATE, the HosmartAI project and its results, by providing targeted information to multiple audiences (including the media and the public) in a strategic and effective manner and to highlight the financial support of the EC.
2. Unless the European Commission or the HosmartAI Coordinator requests or agrees otherwise or unless it is impossible, any dissemination activity related to the action (including in electronic form, via social media, etc.), any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc.), and any infrastructure, equipment and major results funded by the grant must:
 - a. display the EU emblem;
 - b. display the HosmartAI logo and
 - c. include the following text:
 - **For communication activities:** “This project has indirectly received funding from the European Union’s Horizon 2020 research and innovation programme under project HosmartAI (grant agreement No 101016834)”.
 - **For infrastructure, equipment and major results:** “This [infrastructure][equipment][insert type of result] is part of a project that has indirectly received funding from the European Union’s Horizon 2020 research and innovation programme under project HosmartAI (grant agreement No 101016834)”.
3. When displayed in association with a logo, the European emblem should be given appropriate prominence. This obligation to use the European emblem in respect of projects to which the EC contributes implies no right of exclusive use. It is subject to general third-

party use restrictions which do not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, the Beneficiary is exempted from the obligation to obtain prior permission from the EC to use the emblem. Further detailed information on the EU emblem can be found on the European Union [webpage](#) .

4. Any publicity made by the Beneficiary in respect of the project, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that the EC or HosmartAI project is not liable for any use that may be made of the information contained therein.
5. The EC and the HosmartAI Consortium shall be authorised to publish, in whatever form and on or by whatever medium, the following information:
 - a. the name of the beneficiary SME;
 - b. contact address of the beneficiary SME;
 - c. the general purpose of the project;
 - d. the amount of the financial contribution foreseen for the project; after the final payment, and the amount of the financial contribution actually received;
 - e. the geographic location of the activities carried out;
 - f. the list of dissemination activities and/or of patent (applications) relating to foreground;
 - g. the details/references and the abstracts of scientific publications relating to foreground and, if funded within HosmartAI project, the published version or the final manuscript accepted for publication;
 - h. the publishable reports submitted to HosmartAI;
 - i. any picture or any audio-visual or web material provided to the EC and HosmartAI in the framework of the project.

The Beneficiary shall ensure that all necessary authorisations for such publication have been obtained and that the publication of the information by the EC and HosmartAI does not infringe any rights of third parties.

Article 9 – Data protection

9.1 Data protection obligations

1. The Contracting Parties have the obligation to abide by the Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
2. The processing of personal data shall be carried out lawfully, fairly and in a transparent manner, collected for specified purposes and adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.
3. The Beneficiary will use and process the data only for the purposes of this Contract and during the length of the Contract. Any unauthorised use is forbidden. In any event, neither the Contractor nor the Data Provider will be held responsible for any abusive use of data incurred into by the Beneficiary.
4. The Beneficiary shall not to try to re-identify anonymised data. In the event that re-identification occurs, the Beneficiary commits not to use such data.

5. The Beneficiary shall delete, at the end of this Contract, the data to which the Beneficiary has been granted access during the incubation process, except where an agreement is entered into with the Data Provider.

9.2 New data produced

The Beneficiary acknowledges that he/she will be the “data controller” of any new dataset of piece of personal information that the Beneficiary may produce in the course of the HosmartAI project.

Article 10 – Keeping records

The EC may, at any time during the implementation of the Project and up to five years after the end of the HosmartAI project (foreseen for 31 May 2024), arrange for financial audits to be carried out, by external auditors, or by the EC services themselves including the European Anti-Fraud Office (OLAF), on the Beneficiary. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the EC.

1. The Beneficiary must keep adequate records and other supporting documentation to prove the proper implementation of the INNOVATE in accordance with requirements of the national laws and usual accounting principles of the beneficiary.
2. The Beneficiary must provide — during implementation of the INNOVATE and afterwards — 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 Contract (including the extension of findings), the Beneficiary must keep the records and other supporting documentation until 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.

Article 11 – Amendments

1. Amendments or changes to this Contract shall be made in writing and signed by the duly authorized representative of the Contracting Parties. Nevertheless, in the event the EC modifies the conditions, the Contractor will amend the Contract accordingly.

Article 12 – Language

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

Article 12 – Applicable Law

1. This Contract shall be construed in accordance with and governed by the laws of Belgium.

Article 14 – Settlements of disputes

1. 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.

Article 15 – Annexes of the Contract and Order of Priority

1. The following annexes form an integral part of this Agreement:

- a. Annex 1: Open Call 1 text;
- b. Annex 2: Guidelines for Applicants;
- c. Annex 3: Application Form;
- d. Annex 3.1: Description of Work;
- e. Annex 4: Applicant Declaration of Honour;
- f. Annex 5: SME Declaration or PIC number;
- g. Annex 6: Bank Account Information

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

AS WITNESS:

The Contracting Parties have caused this Contract to be duly signed by the undersigned authorized representatives:

<p>For INTRASOFT (the Contractor) Mr/Ms [NAME SURNAME] [POSITION_IN_COMPANY] Signature</p>	<p>For [SME/Individual Entrepreneur_NAME] (the Beneficiary) Mr/Ms [NAME SURNAME] [POSITION_IN_COMPANY] Signature</p>
<p>Done at _____ on DD/MM/202Y</p>	<p>Done at _____ on DD/MM/202Y</p>

For FUNDACION INSTITUTO
TECNOLÓGICO DE CASTILLA Y LEON (the
Treasurer)
Mr/Ms [NAME SURNAME]
[POSITION_IN_COMPANY]
Signature

Done at _____ on DD/MM/202Y

