

Data Pitch

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D3.3 Data legality report v1

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1. **Abstract**

The aim of the Data Legality Report version 1 is to reflect on the process and the considerations in setting up two of the most crucial contract templates for use in the first call of the Data Pitch project (“the Project”). These contracts are the **SME Contract** which sets out the terms and conditions of how the Data Pitch consortium engages with SMEs who are successful in their applications to join the Project for the duration of the programme, as well as the **Data Provider (Data Sharing) Agreement** which sets out the terms and conditions for those organisations that have offered to provide data to the consortium for some of the winning SMEs to use under the Project.

As a project deliverable, the first version of this report sets out key considerations and description of strategic processes in putting together these two contracts. There will be another version of this report due in M20 (August 2018) where we describe any changes made to these contracts in the second call, and reflect on the need for such changes in light of process developments under the Project and operational insights gleaned so far.

This report is split into two sections. Section one includes the process and main considerations of setting up the SME Contract (Annex I contains the full SME Contract). The second section includes the process and main considerations of setting up the Data Provider Agreement (Annex II contains the full Data Provider Agreement).

Abbreviations

CDPA - Copyright, Designs and Patents Act 1988

DPA - Data Protection Act 1998

Data Protection Directive - Data Protection Directive 95/46 EC

DP DSA - Data Providers Data Sharing Agreement

GDPR - General Data Protection Regulation

GFA - Grant funding Agreement

ODI - The Open Data Institute

ODINE - Open Data Incubator

IP - Intellectual Property

IPR - Intellectual Property Rights

SME - Small and Medium Enterprise

SME DSA - SME Data Sharing Agreement

SOTON - The University of Southampton

2. Executive summary

The purpose of the Data Legality Report version 1 is to reflect on the process of creating the two key contractual documents for use under the Data Pitch Project (“the Project”). These legal documents are the SME Contract which sets out the terms and conditions of how the Data Pitch consortium engages with the SMEs who are successful in their application to join the Project (“**the SMEs**”) for the duration of the programme, as well as the Data Provider Agreement which sets out the terms and conditions for those organisations that have offered to provide data to the consortium for some of the winning SMEs to use under the Project (“**the Data Providers**”).

As a project deliverable, the first version of this report sets out key considerations and description of strategic processes in putting together these two contracts. There will be another version of this report due in M20 (August 2018) where we describe any changes made to these contracts in the second call, and reflect on the need for such changes in light of process developments under the Project and operational insights gleaned so far.

This report is split into two sections. Section one includes the process and main considerations of setting up the SME Contract (Annex I contains the full SME Contract). The second section includes the process and main considerations of setting up the Data Provider Agreement (Annex II contains the full Data Provider Agreement).

The SME Contract was put together based on a template version of the SME Contract that was used successfully as part of the Open Data Incubator, [ODINE](#) project. The University of Southampton is the Lead Coordinator of the Data Pitch consortium and therefore the party that will be providing funding to SMEs. This agreement is therefore drafted between The University of Southampton (“SOTON”) and each SME to simplify the process and avoid having an agreement that has to be signed by all of the consortium partners.

The SME Contract is drafted to comply with and in the style of a Horizon 2020 Grant agreement. The important considerations for the contract are that SOTON, on behalf of the consortium and the Commission, is obliged to ensure that the terms of any agreement to distribute funds to SMEs are consistent with the requirements of the Horizon 2020 Grant Funding Agreement (“GFA”).

The Data Pitch project is focused on facilitating the innovative reuse of closed data sets and anticipates that Data Providers will share data that does not contain personal information and is therefore not personal data (legally under EU data protection law). Therefore the main considerations for Annex 7 of the SME contract - a sub-contract agreement for execution between SOTON and each SME called ‘the Data Sharing Agreement’ - is to ensure that the SMEs have the required rights to use the data under the Project legally and fairly.

The main purpose of the **Data Provider Agreement (“DP DSA”)** is to define the terms and conditions under which certain selected data holders provide specific datasets to be used by SMEs for the duration of the Project. The DP DSA is for signature between the University of Southampton and the Data Providers in order to simplify the process to reduce the need for any direct contracts to be signed between the SME and the Data Provider for the duration of the programme.

The DP DSA was created from a precedent standard data sharing licensing agreement. This was decided as the best starting point as the main focus of the DP DSA is the licensing of usage of the data for specific purposes. The agreement deals with all relevant issues for a data licence to ensure that the data is licensed appropriately to the University so that it can then sub-licence relevant data to each of the SMEs participating in the Project (as relevant to the particular

data-track challenge enabling their participation in it and the specific datasets made available under each track).

The detailed contractual considerations for the Project were to ensure that the rights granted by the Data Providers were sufficient for the involvement of the SME. The main considerations were that the DP DSA states that:

- the data for licensing should be capable of sub-licence by the University to the SMEs;
- the Data Provider agrees that the SMEs will own the Results generated by their project;
- Data Providers will be allowed access through a licence to the Results generated by the SME but this licence would be limited to a period of one year after the end of the Project. This position provides an incentive to provide data for use under the Project;
- Data Providers are aware that they would not be able to use the results for non-internal purposes (e.g. sell or sub-license); and
- Data Providers warrant that:
 - they have the right to licence the use of the data they are sharing under the Project; and
 - the data does not infringe third party intellectual property rights; and
 - the data does not contain personal data to the best of its belief, because it has been anonymised or pseudonymised alongside accompanying safeguards before being shared under the Project.

1. Introduction

The purpose of the Data Legality Report version 1 is to reflect on the process of creating the two key contractual documents for use under the Data Pitch project (“the Project”). These legal documents are the **SME contract** which sets out the terms and conditions of how the Data Pitch consortium engages with the SMEs who are successful in their application to join the Project (“**the SMEs**”) for the duration of the programme, as well as the **Data Provider Agreement** which sets out the terms and conditions for those organisations that have offered to provide data to the consortium for some of the winning SMEs to use under the Project (“**the Data Providers**”).

In brief, under the Project, the SMEs will be able to securely access and process data shared by Data Providers after they have qualified to take part in the main acceleration (experimental) stage of the Project. Such data has been collected externally by the Data Providers for purposes other than this Project. This will be processed in a secure environment by the SMEs for multiple defined data-track ‘challenge’ purposes, and the results from the analysed data provided back to Data Providers.

As the University of Southampton (SOTON) is the lead co-ordinator of the Data Pitch consortium, as well as the partner with the SME funding, it was decided that all contracts would be signed between SOTON and each SME or Data Provider (respectively). The Data Providers and the SMEs should not need to sign any separate agreements, all data shared by the Data Providers for use under the Project will be licensed to SOTON and the SMEs will then be granted access to this data through a sub-licensing arrangement setting out the terms and conditions surrounding its usage by them under the Project.

Both documents were initially prepared based upon template contracts that have been used for similar purposes. For the SME Contract, a template agreement used in the EU Horizon 2020 funded project - the Open Data Incubator (“ODINE”) - was used, and for the Data Provider Agreement a standard template for data supply licensing was used. However, it was recognised early in the Project on that the Data Pitch programme differs slightly from existing programmes and, therefore, some contractual terms found in these templates had to be amended in order to ensure fairness between the SMEs and the Data Providers, and for both of the contracts to adhere to existing guidelines on data sharing.

One of the main considerations in putting together the two agreements was acknowledging that the Project mainly focuses on facilitating that sharing of ‘closed’ data sets that are not widely available to third parties. Therefore the terms of sharing this type of restricted data would need to be highlighted very clearly. The main concerns regarding such data were to ensure that the data to be shared has had personal data and sensitive information either redacted, removed, anonymised or pseudonymised from it first, and in describing precisely how SMEs be allowed to use such data as shared with them relevant to the data-track challenge that they will be engaged in under the Project.

Intellectual Property Rights (IPR) were another major concern which was discussed extensively by the consortium. To facilitate incentives to participate in the Project, it was decided that the SME will keep full IPR ownership of any solution (such as software or algorithm) that they build under the programme. However, the SMEs must agree to license their solution to the relevant Data Provider (whose data they use in its creation) for one year after the end of the programme, albeit that such licensing is restricted to non-commercial purposes only.

2. SME Contract

The SME Contract is a legal agreement between the SMEs taking part in the Project and SOTON. The purpose of this agreement is to set the terms of this arrangement as pre-conditions for taking part in the Project, under which each SME will receive investment in the form of a grant and supporting business services to help it innovate. This agreement will be signed between SOTON and each successful SME selected to participate in the first round of the Project, which must take place prior to the start of the accelerator in February 2018.

2.1 Process

The SME Contract was drafted based primarily on a template version of the SME Contract that was used successfully as part of the Open Data Incubator ([ODINE](#)) project. ODINE is an open data incubator programme funded as part of the EU Horizon 2020 initiative; and two of the Data Pitch consortium partners - SOTON and The Open Data Institute (“ODI”) - were also part of the ODINE consortium.

SOTON is the Lead Coordinator of the Data Pitch consortium and the institutional party that will be providing funding to the SMEs. The SME Contract is, therefore, drafted for execution between SOTON and each SME taking part in the Project, in order to simplify the process and avoid having an agreement template that would in practice have to be signed by all of the consortium partners.

The SME Contract is drafted to comply with and in the style of a Horizon 2020 Grant agreement. The important considerations for the contract are that SOTON, on behalf of the consortium and the Commission, is obliged to ensure that the terms of any agreement or distributed funds to SME are consistent with the requirements of the Grant Funding Agreement (“GFA”) signed between them.¹ In addition to these requirements, the SME Contract also details the obligations of SMEs that are specific to the Project for achievement, such as writing a blog after successful milestones.

As part of the legal review carried out in drafting and finalising the SME Contract, other obligations in the GFA and related documents were also cross-checked - such as provisions relating to intellectual property - to ensure contractual consistency.

The Annexes of the SME Contract form an important part of the overall functionality of the agreement. In particular, to facilitate contractual efficacy under the Project, provisions related to how data will be shared by the Data Providers with the SMEs through SOTON are contained in a separate Annex (Annex 7). This approach was designed to ensure that, while the wording of the SME Contract itself remains unchanged, the template Data Sharing Agreement (“SME DSA”) at Annex 7 can be amended separately in the event that a Data Provider has specific requirements for the ways in which their data should be shared under the Project. Such special considerations will be set out in the relevant Data Provider Agreement with SOTON and will need to be reflected in the agreement between the University and the SME.

¹ Article 15 of the GFA refers to various conditions that must be complied with specifically in respect of third party beneficiaries of financial support. Articles 22 and 23 deal with audit requirements, and measures to evaluate the impact of the Project. Also relevant are Articles 34 (conflicts of interest), 36 (confidentiality), 38 (promoting the action and visibility of EU funding), and 46 (liability for damages). The requirements in all these Articles must be satisfied in respect of any SME receiving funding under the Project.

2.2 Main terms and considerations

The Project is focused primarily on facilitating the sharing of ‘closed’ data² (although there may be some use of open data as part of the Project), and data that is not personal data legally under EU data protection law. The main considerations for Annex 7, the Data Sharing Agreement (“the SME DSA”), were to ensure that the SMEs have the required legal rights to use the data in light of such objectives.

2.2.1 IPR

Although data itself as information does not have any intrinsic intellectual property rights, IPR can arise in relation to data through its organisation. For example, the organisation of data into a ‘database’ (as legally defined) gives rise to certain intellectual property rights.³ It is possible therefore that the data for sharing by the Data Providers under the Project may have associated IPR. Therefore, the SME DSA is predominantly a data licence to allow the SME to use the relevant data they are being allowed access to under the Project, including a licence to any pre-existing (“background”) IPR in the data such as database rights from the relevant Data Provider.

The SME DSA sets out the terms under which SMEs may access, view, combine, aggregate and adapt the relevant data, as well as rights to store and process the data. The SME DSA also provides that the SME has the rights to any foreground IPR (“Results”) generated from their engagement in the Project. This allocation of IPR is intended to fulfil one of the key functions of the Project in supporting SMEs doing innovative work in this field of secondary data re-use.

SMEs are obliged to license the Results to SOTON so it may sub-license the rights in those Results to the Data Provider for a one year period following the end of an SME’s involvement in the accelerator programme under the Project. As mentioned, the terms of such licence are limited to internal use only, which for the avoidance of doubt precludes non-internal commercial exploitation. In other words, the licence does not allow a Data Provider to re-sell or sub-license software which is developed by the SME and licensed as part of the Results.

2.2.2 Data Protection and Privacy Laws

Although the definition of “data” forming the subject matter of the SME DSA does not include personal data, the agreement is drafted to cover the possibility that – where data for sharing relates to living persons – some of such data provided by the Data Providers to the SMEs under a licence could, despite best efforts to preclude that possibility, be construed as “personal data” under EU data protection rules (the “Data Protection Directive 95/46 EC” as implemented in national data protection legislation).⁴

This possibility is heightened by a prospective change in data protection law that takes place in 2018, with the introduction of the EU General Data Protection Regulation coming into force on 25

² The ODI has defined closed data as data that “*can only be accessed by its subject, owner or holder*”.

³ A database is legally defined in section 3A(1) of the Copyright, Designs and Patents Act 1988 (CDPA) as: “a collection of independent works, data or other materials which (a) are arranged in a systematic or methodical way, and (b) are individually accessible by electronic or other means.”

⁴ Personal data is defined in the Directive (Article 2(a)) as information relating to an identified or identifiable natural person (a “data subject”), that is, information about a person whose identity is either manifestly clear or can at least be established by obtaining additional information through means “likely reasonably” used. In particular, a person is deemed identifiable if he: “*can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.*”

May 2018.⁵ As the first ‘wave’ of SMEs in the Project – i.e. those that are successful in answer to the first call for applicants commenced 1 July 2017 - should complete their projects by 31 July 2018, the new rules introduced by the GDPR are considered relevant and applicable under the Project as a whole. For more information, see Deliverable 3.2 (“Legal and Privacy Toolkit v 1.0”).⁶

This possibility is most likely to arise in the situation where the data to be shared by Data Providers is pseudonymised. Under the General Data Protection Regulation, there is a definition of ‘pseudonymisation’ at Article 4(5):

“pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person”

Accompanying references in the GDPR text suggest that data that has been subject to pseudonymisation processes should be presumed to remain personal data (legally). Recital 26 states:

“The principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person”

Measures have been taken to minimise the risk that data relating to persons shared under the Project be deemed personal data under existing data protection rules and the GDPR. Notwithstanding, to further reduce legal risk, the SME DSA also contains standard provisions that apply to the extent that any data shared contains personal data. These clauses in SME DSA are drafted to be compliant with both current data protection legislation and with the GDPR.

The clauses are drafted at quite a high level and cover the overarching requirements of what is defined as “Privacy and Data Protections Requirements” which includes:

“the Data Protection Act 1998 (the DPA), the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC) and any new EU law repealing that legislation where it applies during the Term of this Agreement, the General Data Protection Regulation ((EU) Regulation (2016/679), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other national Data Protection Authority, and the equivalent of any of the foregoing in any relevant jurisdiction”

⁵ REGULATION (EU) 2016/679 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, and repealing Directive 95/46/EC (General Data Protection Regulation)

⁶ The SME DSA also addresses the status quo potential (before the GDPR is in force) that the implementation of the Data Protection Directive in national data protection laws (such as the UK Data Protection Act 1998) is effected in slightly different ways across EU Member States, such that the most stringent laws could be considered potentially relevant to the processing of data relating to persons shared under the Project. In other words, a risk-averse stance is adopted in the SME DSA for the avoidance of doubt of knowing, in advance, which Member State data protection laws might be relevant to processing to be carried out under the Project.

The SME DSA also addresses the potential for the SME to be considered as a “joint controller”⁷ (along with the relevant Data Provider) of any data relating to persons to be shared under the Project (assuming that a national data protection authority, or a court, were to issue a finding to that effect). It has been considered important to make this statement to ensure that the SME is aware of this possibility and the associated implications that it could be held responsible for compliance with data protection rules. In addition, under the GDPR, “data processors”⁸ of personal data will also have data protection obligations. Support is provided by the Data Pitch consortium to SMEs regarding compliance with all and any of these data protection compliance obligations that may arise.

One other issue that the SME DSA addresses is in relation to concerns around the potential for so-called “mosaic effects”.⁹ In the context of this Project, such concerns relate to the possibility that mosaic effects might arise either as a result of integrating different data that has been subject to anonymisation techniques being shared under the Project and finding commonalities, or by linkage of individual datasets to other sources of information that are outside the control of the Data Pitch consortium.

The risk of mosaic effects arising increases with the volume of data that the SMEs are permitted to analyse under the Project, which may have been generated from different sources. These include not just data provided by Data Providers (as relevant to each data-track challenge) but also data self-sourced by the SMEs (or other third party) data that they bring to the Project (“the SME Data”). To mitigate such risk and its consequences, the SME DSA requires that SMEs provide a description of the SME Data and SOTON is empowered to refuse the use of this additional data where it has context-specific concerns related to compliance with data protection/privacy laws. Additionally, to manage this risk, the SME cannot share any data licensed to them under the SME DSA with third parties external to the Project.

⁷ “Controller” means “*the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law*”.

⁸ “Processor” means “*a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller*”.

⁹ ‘Mosaic effects’ refers to when it is possible to determine an individual data subject’s identity without having access to obvious (‘direct’) identifiers by correlating data pertaining to the individual across numerous datasets or intra-dataset; whereas individual identifiers in these datasets would not otherwise allow a data subject to be re-identified. In particular, it can give rise to concern that in a data analytic context personal data may be discerned from data despite efforts being made to anonymise personal data by stripping it of identifiers. Consequently, data protection rules would then apply to the processing of this data set, which may not have been envisaged when it was planned to be processed. For more information, see Deliverable 3.2 (“Legal and Privacy Toolkit v 1.0”).

3. Data Provider (Data Sharing) Agreement

The main purpose of the Data Provider Agreement is to define the terms and conditions under which the Data Providers provide their data to be used by SMEs for the duration of the Data Pitch programme. The Data Provider Agreement is to be executed between SOTON and each Data Provider on an individual basis in order to simplify contractual efficacy. In particular, via this 'streamlined' process no contracts should need to be negotiated directly between the SME and the Data Provider for the duration of the programme.

3.1 Process

The Data Provider Agreement is a form of data sharing agreement, for shorthand also known as the Data Provider Data Sharing Agreement ("DP DSA"). Legally, it is a form of data licence between the 'transferor' of data and the 'transferee' (i.e. recipients) of such data. The DP DSA was created from a precedent data licensing agreement.

The DP DSA deals with all relevant issues typical under a data licence – including where the data relates to persons - to ensure that the data for sharing by each Data Provider involved in the Project is licensed appropriately to SOTON, so that it can thereby sub-license the data to the SMEs in the Project in compliance with law and in practically effective ways.

Data protection provisions were added to the DP DSA to reflect the possibility that personal data may be deemed to be included within the data licensed (see section 2.2 above). In case personal data was deemed to be included, the agreement acknowledges the Data Provider as the data controller with the possibility that an SME participant might be a joint data controller (while any data protection responsibilities of SOTON would be limited to data processor).

As part of the legal review carried out in drafting and finalising the DP DSA, obligations in the GFA and related documents were cross-checked to ensure contractual consistency

3.2 Main terms and considerations

Overall, the DP DSA template has been drafted as a balanced document for reasons of fairness and contractual efficacy, such as to ensure that it can be agreed with the Data Providers without a large number of amendments being requested on a one-to-one basis.

3.2.1 Licensing chain of obligations and warranties

The detailed contractual considerations relevant to preparation of the DP DSA, as appropriate for the Project, relate primarily to ensuring that the legal rights to the usage of data granted by the Data Providers are sufficient to cover the activities of the SMEs under the acceleration stage.

The main considerations under the DP DSA to achieve that objective in respect of each Data Provider are:

- the data provided by a Data Provider licensed to SOTON must be capable of being sub-licensed by SOTON to an SME (as the winner of the particular data-track challenge in connection with the relevant data is provided);
- the Data Provider agrees that the SME using its data for acceleration purposes will own the Results it generates in that context under the Project;

- the Data Provider will be allowed access through a licence to the Results generated by the SME but this licence would be limited to a period of one year after the end of the SME's involvement in the Project;
- the Data Provider will be aware that they would not be able to use the Results other than for internal use; and
- the Data Provider warrants that:
 - it has a pre-existing right to licence the use of the data it shares under the Project; and
 - the data does not infringe third party intellectual property rights; and
 - the data does not contain personal data to the best of its belief, because it has been anonymised or pseudonymised alongside accompanying safeguards before being shared under the Project.

3.2.2 Liability

The liability position in the DP DSA is to cap the liability that may be incurred flowing from a breach under the contract to £10,000 for each party.¹⁰ A £10,000 'ceiling' was decided as a reasonable cap in the circumstances to incentivise Data Providers to share data for reuse by the SMEs. In addition, indirect losses such as loss of profits, revenue, reputation and good will are excluded from losses that can be claimed, as they typically result in the highest financial value for any 'damages' (i.e. court-ordered financial awards) awarded. Again, the intention behind this approach is to ensure that the terms of the DP DSA are reasonable and fair towards the Data Providers who are providing closed data sets without charge for sharing with SMEs in the Project.

Notwithstanding this intention, the DP DSA states that the Data Provider is liable for any breach of the warranties set out in the agreement, and this liability is uncapped. For example, this provision would protect SOTON and the SMEs from any claims by third parties that data usage under the Project infringes their IPR or data protection law. The damages claimed in IPR breach cases in particular are often very high and so a £10,000 cap was deemed unreasonable in light of that fact.

3.3 Feedback from Data Providers

The following themes were raised as potential issues in relation to the DP DSA by those organisations applying to be Data Providers for the first stage of the Project:

- **Personal Data:** Some Data Providers requested that contractual provisions related to personal data be removed from the DP DSA because it is not relevant to the particular data they wish to share for licensing to SOTON for reuse by the SMEs under the Project. Such requests are considered carefully by SOTON on a case-by-case basis where data relating to persons are to be shared, which in each case must have been subject to techniques of anonymisation/pseudonymisation before transfer to the SMEs. Alternative contractual provisions may be possible if the level of re-identification risk (such that persons could in fact be deemed identifiable through means reasonably likely to be used) is assessed to be remote in particular circumstances associated with a dataset for sharing and can be evidenced as such. As explained above, any personalisation of the DP DSA – or use of an alternative contract based on a Data Provider's standard contract terms - requires close

¹⁰ There are certain exceptions in law precluding the ability to cap liability, such as for death or personal injury, unlikely to be relevant on the facts.

scrutiny and amendment of the SME DSA to ensure contractual consistency. However, with all but one exception, the Data Providers approached so far under the Project have been willing to contract under the terms of the DP DSA with minor amendments.

- **Governing law and jurisdiction:** There was some concern as to whether the choice of governing law (English) and arbitration place (London) contained in the DP DSA would be acceptable to the Data Providers. So far the only requested amendment has been to change the place of arbitration of any legal disputes arising from the Project from London to another European capital city. This has been accepted by SOTON as the governing law remains English law so there remains certainty for that England-based institution on the interpretation of the terms of the DP DSA. In addition, any arbitration proceedings would be conducted in English.
- **Disclosure of anonymisation and pseudonymisation techniques:** The DP DSA contains a clause requiring the Data Provider to disclose of a description of the anonymisation/pseudonymisation techniques used on data relating to persons shared under the Project. It was added so that SOTON could review the types of techniques used by those Data Providers wishing to supply data relating to persons for use in the Project. Such information is deemed to contain academic value, in particular to develop later versions of the Legal and Privacy Toolkit while respecting confidentiality and anonymity.
- **Intellectual Property Rights:** The standard position in the DP DSA requires that a Data Provider grants a licence to supply data to the relevant (data-track challenge winning) SME for use under the Project and, as necessary, for such SME to exploit the Results generated after the end of the Project. A Data Provider is able to choose whether to charge the SME for the post-term use part of this licence, alternatively they can choose not to charge (albeit this is not made explicit in the DP DSA as currently drafted in template form).
- **Publication:** SOTON has the right under the DP DSA to publish information or knowledge related to the type of data shared by a Data Provider for use under the Project without its permission. A Data Provider can only amend such information, as provided by it in this respect, to take out confidential details and they must act reasonably and without delay in carrying out this redaction process.
- **Liability:** As described in section 3.2.2 above, the DP DSA provides that there is no cap on liability in respect of any further breaches of the warranties contained in the agreement. One of the Data Providers requested amendment of the relevant clause to include a £10,000 cap on potential liability under the DP DSA for breach of its data protection and IPR warranties. To determine whether this was acceptable, a careful review of the relevant data is required to determine whether the extent of any risk is extremely remote (in which case, exceptionally, such a request may be granted). The Data Provider in this instance also requested that a breach of confidence in respect of the information supplied by it under the Project (by SOTON or the SMEs) be subject to uncapped liability.

Annex I - SME Contract Template

Contracting parties

- (1) University of Southampton, a non-profit organization established in University Road, Southampton, UK, SO17 1BJ, with VAT No. GB 568 6304 14000, duly represented by Emma Mills – EU Accountant, hereinafter referred to as the “**Data Pitch Co-ordinator**”
- (2) [*insert company name*], an SME established in [*insert relevant address*] hereinafter referred to as the “**Company**”, duly represented by [Add name and title],

Together the “**Contracting Parties**” or individually the “**Contracting Party**”, have agreed to the following terms and conditions, including those in **Annexes 1-7**, which form an integral part of the agreement (hereinafter referred to as the “**Contract**”).

1. General provisions

- 1.1. “**Data Pitch**” is a data open innovation programme established to accelerate growth of the European digital economy. The University of Southampton acts on behalf of the consortium, comprising the University of Southampton, BETA-I Accociaco Para a Promocaoda Inovacao e do Empreendedorismo, the Open Data Institute and Dawex Systems (the “**Data Pitch Consortium**”). The “**Data**” for the Project will be provided by the “**Data Pitch Data Provider**” and the Company may also provide “**SME Data**”. Both the Data and the SME Data will be provided on the terms of the “**Data Sharing Agreement**” set out in **Annex 7**.
- 1.2. The European Commission (hereinafter referred as the “**EC**”) and the Data Pitch Co-ordinator and the Data Pitch Consortium have signed Grant Agreement no 732506 for the implementation of Data Pitch as part of the H2020 Framework Programme for Research and Development.
- 1.3. Data Pitch has, as one of its major objectives the distribution of EC Horizon 2020 funding to SMEs for the purposes of incubating data driven innovation business in Europe by means of two competitive calls for innovation as described in **Annex 2**. The Project has been positively evaluated and is therefore entitled to receive funding and distribute funding according to the terms and conditions set out under this Contract. The funds which will be received by the Company under this Contract are provided by the EC. The Data Pitch Co-ordinator has been tasked by the EC to manage these funds as described in the Grant Agreement no 732506.
- 1.4. This Contract defines the framework of rights and obligations of the Contracting Parties under the specific project submitted by the Company and that has been awarded funding under the Data Pitch project (**insert project name here**), hereinafter referred to as the “**Project**”, as further described in **Annex 1**.
- 1.5. **Annex 7** of this Contract sets out the provisions of the Data Sharing Agreement under which the Company can use the Data provided by the Data Pitch Data Provider and the SME Data (if applicable) for the purposes of the Project.

2. Entry into force of the contract and termination

- 2.1. This Contract shall enter into force on the day of its signature by the last Contracting Party, which can be sent as a scanned copy of the Contract by electronic means to the other Contracting Party. The Contract shall continue in full force until complete fulfilment of all obligations undertaken by the Company for the Project, estimated to be approximately six (6) months duration and as agreed in **Annex 1**. Termination of the Contract will be subject to the terms and conditions set out in Article 13, below.
- 2.2. The provisions relating to Intellectual Property Rights, Information and Dissemination, Financial Audits and Control, Liability, Applicable Law, Settlement of Disputes and Confidentiality (specifically for the time period set out in Article 8 below) shall survive the expiration or termination of the Contract.

3. Performance obligations and responsibilities of the Company

- 3.1. The Company undertakes to take part in the efficient implementation of the Project and to cooperate and perform and fulfil promptly and on time, all of its obligations set out in this Contract and in particular **Annex 1, Annex 2 and Annex 7** for use of the Data as may reasonably be required and with a duty of good faith and compliance with the Ethics Statement accompanying the call documents.
- 3.2. The Company will comply with the obligations as set out in this Contract and **Annexes 1, 2 and 7**, in particular:
 - 3.2.1. The Company will use the allocated funding for the sole purpose of carrying out the Project and in accordance with the requirements of Article 6.
 - 3.2.2. The Company shall immediately inform the Data Pitch Co-ordinator of any changes in status or circumstances that may lead to a delay in or inability to perform its obligations under the Contract.
 - 3.2.3. The Company shall not assign its rights, duties or obligations under this Contract to any person or entity, in whole or in part and any attempt to do so shall be deemed a breach of this Contract.
 - 3.2.4. The Company shall comply with the terms of the Data Sharing Agreement set out in **Annex 7**.
 - 3.2.5. The Company shall keep all records relating to the Project including financial records for Eligible Costs as set out in Article 6 for a period of seven (7) years from the termination or expiry of this Contract.
 - 3.2.6. The Company shall comply with all relevant laws including but not limited to anti-corruption and anti-bribery, data protection (including the provisions set out in **Annex 7**), equality and ethics including compliance with the Ethics Statement accompanying the call documents.
- 3.3. The Company shall also comply with the following specific obligations in relation to Data Pitch:
 - 3.3.1. Populate and maintain a contact sheet with key contact details of staff;
 - 3.3.2. Provide bio and photo for each key member of your team to the Data Pitch communication team, this will be placed on the Data Pitch website;
 - 3.3.3. Update any team changes and communications data to the Data Pitch Co-ordinator as soon as reasonably practicable and in any event, no later than seven days following the relevant change;
 - 3.3.4. Provide biweekly (every two weeks) financial updates using a form provided by the Data Pitch Co-ordinator including, but not limited to the value of new business secured, grants secured, revenue recognised and the current cash position;
 - 3.3.5. Provide biweekly (every two weeks) updates of the work funded by the Data Pitch Project, using a form provided by Data Pitch, including, but not limited to the progress towards the achievement of milestones and deliverables, and events attended;
 - 3.3.6. Write a blog post after each successful milestone, which will be published on Data Pitch's website;
 - 3.3.7. Work to promote the Data Pitch Project and its mission;
 - 3.3.8. Use the Data Pitch brand appropriately in its communications; and
 - 3.3.9. Do nothing that may have an adverse effect on the reputation of the Data Pitch Project or Data Pitch Consortium members.
4. **Conflict of Interests**
 - 4.1. The Contracting Parties agree to take all measures to prevent any situation where the impartial and objective implementation of the Project is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ("**Conflict of Interest**").
 - 4.2. Each Contracting Party must formally notify the other Contracting Party without delay of any situation constituting or likely to lead to a Conflict of Interest and immediately take all the necessary steps to rectify this situation.
 - 4.3. The Data Pitch Co-ordinator will notify the EC without delay of a Conflict of Interest of either the Company of the Data Pitch Co-ordinator.

4.4. The Contracting Parties agree to take any reasonable measures notified to the Data Pitch Co-ordinator by the EC to rectify a Conflict of Interest.

5. Breach of contractual obligations

5.1. In the event of a breach the Data Pitch Co-ordinator will give written notice requiring that, where possible, such a breach is to be remedied within thirty (30) days. In case the Company has not remedied the breach within the notice period, or a remedy is not possible, the Data Pitch Co-ordinator may decide to terminate the contract unilaterally and to take measures to secure from the Company the repayment of the payments already received.

5.2. For the avoidance of doubt the following sets out a non-exhaustive list of events that will constitute a breach:

5.2.1. The Data Pitch Co-ordinator identifies that the Company has breached its obligations under the Contract;

5.2.2. The Company has changed the nature of its business and therefore is not able or willing to continue the Project; or

5.2.3. The Company breaches the provisions of the Data Sharing Agreement set out at Annex 7.

6. Funding and financial provisions

Maximum financial contribution

6.1. The financial contribution shall be specified in the Project description included in **Annex 1**.

6.2. The maximum financial contribution to be granted to the Company will be capped at the financial contribution as part of the proposed SME budget specified in **Annex 1** and must not exceed one hundred thousand euros (€100,000).

Distribution of the financial contribution

6.3. The financial contribution to be granted to the Company shall be calculated and distributed for the following "**Eligible Costs**" only:

6.3.1. Personnel: hiring of personnel who are directly involved in the execution of the plan for the incubation period.

6.3.2. Equipment: Equipment needed for the execution of the plan for the incubation period.

6.3.3. Direct costs: other goods and services: Consumables and other goods and services, as long as they are for the achievement of the goals of the incubation period.

6.3.4. Subcontracting: Tasks to be subcontracted have to be agreed during the negotiation phase and cannot include tasks deemed critical for the Project.

6.3.5. Indirect costs: (within the €100,000 limit and covering items such as rent, admin, printing, photo-copying, amenities etc.) are eligible if they are declared on the basis of the flat-rate of 25% of the eligible direct costs (see clause 6.3), from which are excluded:

(a) Costs of subcontracting and

(b) Costs of in-kind contributions provided by third parties which are not used on the beneficiary's premises

6.3.6. All costs should be stated inclusive of any irrecoverable VAT. Research grants are outside the scope of VAT and all input VAT on expenses directly related to the Project will therefore be irrecoverable.

6.4. Financial support will be implemented as reimbursement of the costs incurred by the recipients when implementing the supported activities, all in accordance with the provisions specified in **Annexes 1 and 2**.

6.5. Payments to the Company will be made by the Data Pitch Co-ordinator. The Data Pitch Co-ordinator will give prior written notice to the Company of the estimated date and the amount to be transferred into the Company's bank account (according to the information in **Annex 3**), giving the relevant references.

6.6. In any case, the financial grant to be paid will always be subject to the following conditions:

6.6.1. The achievement of the milestones and deliverables specified in **Annex 1** and reported in accordance with the terms of this Contract.

- 6.6.2. The payment will be made for the Eligible Costs only as stated in Article 6.3.
- 6.6.3. The Data Pitch Co-ordinator reserves the right to withhold the payments if the Company does not comply with the obligations and responsibilities specified in this Contract and in **Annexes 2 and 7**.
- 6.7. Payments will be transferred in stages with an initial payment an interim payment and a final payment all as set out in **Annex 1**.
- 6.7.1. The initial payment of 30% of the total financial grant will be released no later than fifteen (15) calendar days after the Contract has been agreed and signed by the Company and by the Data Pitch Co-ordinator.
- 6.7.2. The interim payment of 30% of the total financial grant will be paid after four (4) months of the Project and after the successful completion of the first 2 Milestones of the Project.
- 6.7.3. The final payment of 40% of the total financial grant will be transferred within fifteen (15) calendar days of the completion of the Project and the receipt and approval of the final project report by the Data Pitch Project Management Board.
- 6.8. Banking and transaction costs relating to the bank transfers will be paid by the Company.

7. Liability of the Company

- 7.1. The EC, the Data Pitch Co-ordinator and the other members of the Data Pitch Consortium cannot be held liable for any acts or omissions of the Company in relation to this Contract nor for any damage caused by the Company as a consequence of implementing this Contract including any acts of gross negligence.
- 7.2. The Company shall bear sole responsibility for ensuring that their acts within the framework of this Contract do not infringe third parties rights.
- 7.3. The EC, the Data Pitch Co-ordinator, and the other members of the Data Pitch Consortium cannot be held liable for any damage caused to the Company as a consequence of implementing the Project including consequential losses including, for the avoidance of doubt, any losses in respect of processing activities in relation to the Data.

8. Confidentiality

Principles

- 8.1. With respect to all information of whatever nature or form as is disclosed between the Contracting Parties in connection with the Project and identified in writing as confidential, the terms of this Article shall apply.

Confidentiality obligations

- 8.2. The Contracting Parties agree that the information defined in Article 8.1 is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information, and the Contracting Parties undertake that they will not, during the Project and for a period of five (5) years from the expiration date of the Project, use any such information for any purpose other than in accordance with the Contract and the terms specified in **Annexes 2 and 7**.
- 8.3. The Contracting Parties undertake that they will, during the Project and for a period of five (5) years from the expiration date of the Project, treat the information as confidential, provided always that such agreement and undertaking shall not extend to any information which the receiving Party can show:
- 8.3.1. was, at the time of disclosure to the Company, published or otherwise generally available to the public; or
- 8.3.2. has, after disclosure to either of the Contracting Parties, been published and become generally available to the public otherwise than through any act omission on the part of the receiving Party; or
- 8.3.3. was already in the possession of a Contracting Party, without any restrictions on disclosure, at the time of disclosure to the receiving Party; or

- 8.3.4. was rightfully acquired from others without any undertaking of confidentiality; or
 - 8.3.5. is or was independently developed by a Contracting Party without use of the information provided by the disclosing Party; or
 - 8.3.6. was required to be disclosed in order to comply with applicable laws or regulations or with a Court or administrative order.
- 8.4. In case of breach of the confidential rules in this Contract, the Contracting Party breaching the confidentiality obligations will remain solely liable for possible claims.
- 8.5. The Contracting Parties agree that confidential information that is disclosed to the EC by the Data Pitch Co-ordinator may be disclosed to:
- 8.5.1. the EC's staff, other EU Institutions and bodies; or
 - 8.5.2. third parties as necessary to implement the Data Pitch Project or safeguard the EC's financial interests,
all subject to those parties being bound by obligations of confidentiality.
- 8.6. Breach of the provisions of this Article 8 may result in termination of this Contract by either Contracting Party.

9. Intellectual property rights

- 9.1. **"Background IP"** means all IP Rights owned by or licensed to the Company and all IP Rights owned by or licensed to the Data Pitch Co-ordinator at the time of the Contract.
- 9.2. **"IP Rights"** means patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 9.3. **"Results"** means any tangible or intangible outputs of the Project such as data knowledge or information, in whatever form or nature, whether it can be protected or not, that are generated by the Company in the Project, as well as any IP Rights attached to it.
- 9.4. The Contracting Parties agree that no rights or transfer ownership shall be granted to any Background IP of either Contracting Party as a result of this Project save for as expressly provided for in this Contract.
- 9.5. Each Contracting Party hereby grants a worldwide, non-exclusive licence to any Background IP required for the Project to the other Contracting Party solely for the purposes of the Project and the Data Pitch Project and sub-licensable solely to the Data Pitch Consortium members for those purposes only.
- 9.6. The Contracting Parties agree that IP Rights in the Results developed during the Project shall be owned by the Company.
- 9.7. The Company hereby grants a worldwide, non-exclusive, licence of the IP Rights in the Results to the Data Pitch Co-ordinator, such licence shall be sublicensable to the Data Pitch Consortium members solely for the purposes of the Data Pitch Project and for no commercial use whatsoever.
- 9.8. The licence granted in Article 9.7 shall also be sub-licensable by the Data Pitch Co-ordinator to the Data Provider for a period of one (1) year after the end of the Project, save that the sub-licence shall only allow the Data Provider to use the IP Rights for its internal use in relation to the Data, which may be commercial use, and for the avoidance of doubt, where the IP Rights are software, the sub-licence granted allows for the use of the software but does not permit the commercial re-sale of that software by the Data Provider.
- 9.9. The Contracting Parties acknowledge that there may be IP Rights related to the Data that will be subject to the specific provisions of the Data Sharing Agreement in **Annex 7**. In case of any conflict between the provisions of this Contract and the Data Sharing Agreement in relation to IP Rights, the provisions of the Data Sharing Agreement shall prevail.

10. Force majeure

- 1.1. **“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 Contract, 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. 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.
- 1.2. 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.
- 1.3. A Contracting Party shall not 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 Company is not able to overcome the consequences of Force Majeure within thirty (30) calendar days after such notification, the Data Pitch Co-ordinator is entitled to terminate the Contract unilaterally.

2. Information, and Dissemination

Information and communication with the EC and the Data Pitch Consortium

- 2.1. For the avoidance of doubt this Article has no impact on the Confidentiality provisions set out under Article 8 above.
- 2.2. The Company shall, throughout the duration of the Project, take appropriate measures to engage with the public and the media about the Project and to highlight the financial support of the EC and the Data Pitch Consortium.
- 2.3. Any communication activities of the Company related to the Project must:
 - 2.3.1. Display the EU emblem;
 - 2.3.2. Include the text: *“This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 732506.”*
- 1.1. Any publicity made by the Company in relation with 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 and the Data Pitch Consortium are not liable for any use that may be made of the information which it contains.
- 1.2. The Company acknowledges and agrees that EC and the Data Pitch Project shall be authorised to publish, in whatever form and on or by whatever medium, the following information:
 - 2.3.3. the name of the Company;
 - 2.3.4. contact address of the Company;
 - 2.3.5. the general purpose of the Project;
 - 2.3.6. the amount of the financial contribution of Data Pitch foreseen for the Project;
 - 2.3.7. the geographic location of the activities carried out;
 - 1.2.1. the list of dissemination activities and/or of patent (applications) relating to the Project;
 - 1.2.2. the publishable reports submitted to it, in accordance with **Annex 1** and the obligations under this Contract; and
 - 1.2.3. any picture or any audiovisual or web material provided to Data Pitch during the Project.
- 1.3. The Company shall ensure that all necessary authorisations for such publication have been obtained and that the publication of the information by the EC and Data Pitch does not infringe any rights of third parties.
- 1.4. The Company must participate in dissemination and networking events organized by the EC or Data Pitch, as specified in **Annex 1** and the obligations under this Contract.

Information and communication among the Contracting Parties

- 1.1. Any notice to be given under this Contract shall be in writing to the legal authorities of Contracting Parties.

- 1.2. Any change of persons or contact details shall be notified immediately to the Data Pitch Co-ordinator as specified in this Contract.
2. Financial audits and controls

Company Obligations

- 1.1. The Company shall make available directly to the EC or their representatives all information that is required to verify that the Project is/was properly managed and performed in accordance with the present Contract and its Annexes. The EC may carry out an audit during the Contract and up to four (4) years after the termination or expiry of the Contract. The EC may audit the financial implementation or technical implementation under the Contract.
- 1.2. The Company shall keep originals or, in exceptional cases, duly authenticated copies – including electronic copies – of all documents relating to the Contract for up to five (5) years after the termination or expiry of the Contract. These shall be made available to the EC where requested during any audit.
- 1.3. The Company shall ensure that the EC's services and any external body(ies) authorised by it have on-the-spot access at all reasonable times, notably to the Company's offices, to its computer data, to its accounting data, and to all the information needed to carry out an audit, including information on individual salaries of staff involved in the Project.
- 1.4. The European Court of Auditors shall have the same rights as the EC, notably right of access, for the purpose of checks and audits, without prejudice to its own rules. In addition, the EC may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the EC in order to protect the European Communities' financial interests against fraud and other irregularities.

Audit Findings

- 1.1. If the audit shows ineligible costs, or improper implementation of the action under the Contract, it may lead to suspension or termination of the Contract by the Data Pitch Co-ordinator and potential rejection of costs.
- 1.2. In the event that the EC audit rejects any costs and seeks to recover contributions from the Data Pitch Co-ordinator of financial contributions made to the Company, the Company agrees to repay such amounts to the Data Pitch Co-ordinator.
- 1.3. If the EC suspects that the Company committed fraud or other illegal acts, it will inform the European Anti-Fraud Office (“**OLAF**”).

2. Termination and Suspension

Termination

- 1.1. This Contract shall terminate on the completion of the Project and receipt of the final payment by the Company.
- 1.2. The Data Pitch Co-ordinator may terminate the Project:
 - 1.2.1. if the EC terminates the Data Pitch Grant Funding Agreement; or
 - 1.2.2. If the Company commits a material breach of the Contract as set out in Article 5.
- 1.3. The Company may terminate the Project if the Data Pitch Co-ordinator commits a material breach of the Contract.
- 1.4. A Contracting Party may terminate this Contract in the event that the other Contracting Party is declared bankrupt, being wound up, having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, or is subject to any other similar proceedings or procedures.
- 1.5. In the event of termination of this Agreement in accordance with Article 13.2, 13.3 or 13.4, all rights acquired by the Contracting Parties and the licences granted by the Contracting Parties to each other, pursuant to this Contract shall continue upon such termination.

Suspension

- 1.6. In the event that the Data Pitch Project is suspended by either the EC or the Data Pitch Consortium, the Data Pitch Co-ordinator shall inform the Company without delay and the Company agrees to suspend work on the Project until the Data Pitch Co-ordinator informs the Company that the suspension is lifted
- 1.7. The Company agrees that costs incurred during the suspension of the Project are not Eligible Costs as defined in Article 6.
- 2. Language
 - 2.1. This Contract is drawn up in English language, which shall govern all documents, notices, meetings and related processes.
- 3. Amendments
 - 3.1. Amendments or changes to this Contract shall be in writing and signed by the duly authorised representatives of the Contracting Parties.
 - 3.2. Nevertheless, in the event the EC modifies the conditions of its grant to the Data Pitch Co-ordinator, the Data Pitch Co-ordinator has the right to amend the Contract accordingly.
- 4. Applicable law
 - 4.1. This Contract shall be construed in accordance with and governed by the laws of England and Wales.
- 5. Settlement of disputes
 - 5.1. The Contracting Parties shall endeavour to settle their disputes amicably.
 - 5.2. 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, may be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be London unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.
 - 5.3. If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within sixty (60) calendar days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either Contracting Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of sixty (60) calendar days, either Contracting Party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Contracting Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be London unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

AS WITNESS:

The Contracting Parties have caused this Contract to be duly signed by the undersigned authorised representatives in three (3) copies the day and year first above written:

<p>For (insert Company name & Director's name/surname)</p> <p>Director</p> <p>Signature:</p>	<p>For the University of Southampton (the Data Pitch Co-ordinator)</p> <p>Mr/Ms/Dr [NAME SURNAME]</p> <p>[POSITION_IN_COMPANY]</p> <p>Signature</p>
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Signed at _____ on DD/MM/201Y	Signed at _____ on DD/MM/201Y
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Annex 1 Project description

This is based on the original submission by the Company for the Project, which might have been altered during negotiations. In addition to the original submission, the project description also includes a list of deliverables and milestones, the budget allocated to them, and the list of dissemination and networking events the Company commits to attend.

Annex 2 Guide for applicants

See

<https://docs.google.com/document/d/1E1gyqeGzGhqDdlBill5KOQD7QqafSSv42B3PbNSng7I/edit?usp=sharing>.

Annex 3: Bank account information form

This is the bank information document which must be provided and signed and stamped by the representative of the Company. The template can be found at:

http://ec.europa.eu/budget/library/contracts_grants/info_contracts/financial_id/fich_sign_ba_gb_en.pdf

Please use CAPITAL LETTERS and LATIN CHARACTERS when filling in the form.

Annex 4: Declaration of honour

This is the document uploaded by the Company with the original submission

Annex 5: Administrative data form

This is the administrative data submitted by the Company with the original application.

Annex 6: SME validation information

The following should be provided to the co-ordinator to validate the SME status of the applicant.

You can submit original documents in all the official EU languages. However, you must also submit a certified/official/legal translation into English made by an accredited body or translator. Data Pitch will not be able to validate your SME status unless you provide these translations.

- Completed Legal Entity Identification form. The form can be found at: http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_privComp_en.pdf
- SMEs self-check document and associated PIC (Participation Identification Code) number produced by EU Participant Portal.
- Company Registration Number & Registration Documents.
- Signed and stamped copy of Director's passport.
- Official VAT document (or equivalent) or – if you are not registered for VAT – proof of VAT exemption not older than 6 months or proof that a VAT registration is not required.
- Balance Sheet.
- Profit and Loss accounts.
- Staff Head Count Expressed as Full Time Equivalents.
- For newly established enterprises (e.g. start-up company) that have not yet closed accounts: a self-declaration, including a bona fide estimate (in the form of a business plan) for the on-going financial year.
- For enterprises without turnover whose activity implies a long time-to market: a declaration of the investment made and the likely expected return (to demonstrate that, despite the lack of turnover, your enterprise is engaged in an economic activity). Sworn or solemn statements before a judicial or administrative authority, notary or public officer are **not** acceptable proof of your SME status.

Annex 7: Data Sharing Agreement

THIS AGREEMENT is dated at the date of the last signature below.

BETWEEN

- (1) UNIVERSITY OF SOUTHAMPTON, RC000668, established in Highfield, SOUTHAMPTON SO17 1BJ, United Kingdom, VAT number GB568630414 (the **University**); and
- (2) [FULL COMPANY NAME] incorporated and registered in [add COUNTRY] with company number [add NUMBER] whose registered office is at [add REGISTERED OFFICE ADDRESS] (the **SME**).

Each a "**Party**" and together the "**Parties**".

Date of Agreement (date of signature): [Add date]

The Parties agree to be bound by the Agreement of the attached terms and conditions.

<p>Signed on behalf of University of Southampton</p> <p>Name: _____</p> <p>Signature: _____</p> <p>Date: _____</p>	<p>Signed on behalf of [add name of company]</p> <p>Name: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
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Data	<p>Add description of the Data to be provided including whether the Data:</p> <ul style="list-style-type: none"> has been subject to any anonymisation procedures; or has been subject to Pseudonymisation Procedures as defined. <p>Note that the definition of Data must not include Personal Data save to the extent that Pseudonymisation Procedures have been applied, and any other relevant measures have been taken, to reduce re-identification risk from the Data as far as reasonably possible.</p>
SME Data	<p>Add description of the SME Data to be provided including for each data set used for the Project:</p> <ul style="list-style-type: none"> the origin and ownership of the SME Data including whether the SME Data is or contains Open Data; the rights that the SME has to use the SME Data; whether the SME Data has been subject to any anonymisation procedures; or whether the SME Data has been subject to Pseudonymisation Procedures as defined.
File Delivery Method	Describe the medium of transfer of the Data.
Termination Date	[Add date]

Background:

- (A) The University is the lead coordinator of the Horizon 2020 funded European Project, "**Data Pitch**" which will provide the technological and legal infrastructure for the owners of data sets to share their data in a secure and reliable environment and for SMEs to experiment with that Data as part of the Data Pitch Project.
- (B) The Data Provider has licensed the Data to the University for the Data Pitch Project and has agreed to share the Data with the SME for research purposes only.
- (C) The SME has been selected to undertake a project, [add description] (the "Project") from a competitive call as part of Data Pitch and the SME and the University have entered into the Data Pitch Agreement (as defined below) for the Project.
- (D) The SME has agreed that it will only use the Data in the Project for the SME Permitted Use and on the terms of and subject to the conditions of this Agreement.
- (E) The SME may wish to, but is not obliged to, provide data to the Project in addition to the Data provided by the Data Provider (the "SME Data") as defined below.

It is agreed as follows:

1. Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"Agreement" means this Agreement (including any schedule or annexure to it and any document in agreed form).

"Confidential Information" means any commercial or technical information in whatever form or medium which is disclosed by one Party (the "**Disclosing Party**") including in the case of SME, a company in the SME Group, to the other Party and Confidential Information shall include, without limitation:

- (a) all business, statistical, financial, technical, marketing and personnel information, customer or supplier details, know-how, designs, trade secrets, methodologies or software; and
- (b) all Intellectual Property Rights of the Disclosing Party or its licensors,

but excluding the Data or the SME Data unless either is identified as Confidential Information or has been subject to Pseudonymisation Procedures.

- (i) **"Data"** means as described on page 2 of this Agreement.
- (ii) **"Data Controller"** means as defined in the DPA, the Data Protection Directive before 25 May 2018, and the General Data Protection Regulation from 25 May 2018 onwards.
- (iii) **"Data Pitch Contract"** means the contract between the SME and the University dated [add date] (including any schedule or annexure to it and any document in agreed form).
- (iv) **"Data Protection Authority"** means the relevant data protection authority in the territories where the parties to this Agreement are established.
- (v) **"Data Protection Directive"** means the EU Data Protection Directive (95/46/EC) of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

"Data Provider" means the organisation which has licenced the Data to the University for the purpose of the Data Pitch.

"Data Provider Group" means the Data Provider and its subsidiaries and holding companies, "subsidiary" and "holding company" having the meanings ascribed to those terms in Section 1159, Companies Act 2006.

- (vi) **"Data Processor"** means as defined in the DPA, the Data Protection Directive before 25 May 2018, and the General Data Protection Regulation from 25 May 2018 onwards.
- (vii) **"Data Subject"** means as defined in the DPA, the Data Protection Directive before 25 May 2018, and the General Data Protection Regulation from 25 May 2018 onwards.
- (viii) **"DPA"** means the UK Data Protection Act 1998 (as amended).

(ix) **“General Data Protection Regulation”** means the EU General Data Protection Regulation ((EU) Regulation (2016/679) 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, and repealing Directive 95/46/EC.

(x) **“File Delivery Method”** means as described on page 2 of this Agreement.

“Intellectual Property Rights” means all industrial and intellectual property rights including patents, utility models, rights in inventions, registered designs, rights in designs, trademarks, copyright and neighbouring rights, database rights, moral rights, trade secrets, and rights in confidential information and know-how (all whether registered or unregistered and including any renewals and extensions thereof) and all rights or forms of protection having equivalent or similar effect to any of these which may subsist anywhere in the world and the right to apply for registrations of any of the foregoing.

“Open Data” means any data that can be freely used, re-used and redistributed by anyone - subject only, at most, to the requirement to attribute and sharealike.

“Personal Data” means as defined in the Data Protection Directive before 25 May 2018; and the General Data Protection Regulation from 25 May 2018 onwards.

“Privacy and Data Protection Requirements” means the Data Protection Act 1998 (the DPA), the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC) and any new EU law repealing that legislation where it applies during the Term of this Agreement, the General Data Protection Regulation ((EU) Regulation (2016/679), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other national Data Protection Authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

“Pseudonymisation Procedures” means the processing of Personal Data in such a manner that the Personal Data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the Personal Data are not attributed to an identified or identifiable natural person.

“Results” means any tangible or intangible outputs of the Project such as data knowledge or information, in whatever form or nature, whether it can be protected or not, that are generated by the SME Participant in the Project, as well as any Intellectual Property Rights attached to it.

“Term” means the period commencing on the date of this Agreement and ending on the Termination Date.

“Termination Date” means as described on page 2 of this Agreement.

“SME Data” means data provided and used as part of the Project collected either by the SME or third parties (where the SME is already in possession of this data at the time that this Agreement is entered into) subject to an agreement with the SME for its use or Open Data that is available to use for the Project all as described on page 2 of this Agreement.

“SME Permitted Use” means as set out in the project description in Annex 1 of the Data Pitch Contract.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to:
 - (i) any Party includes its successors in title and permitted assigns;
 - (ii) a **“person”** includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);

(iii) clauses are to clauses of this Agreement; and

(c) the headings are for convenience only and shall not affect the interpretation of this Agreement.

2. Consideration

2.1 In consideration of the supply of Data from the University to the SME and the licences granted in Clause 3 and 4, the SME agrees to use the Data for the SME Permitted Use only and in accordance with this Agreement.

2.2 The Parties shall each be responsible for their own costs incurred in negotiating and performing their respective obligations under this Agreement.

3. Licence

3.1 Subject to Clause 3.2, the University grants to the SME a non-exclusive, non-transferable, revocable licence, to:

(a) access, view and combine or aggregate the Data with other data, including the SME Data, or information or adapt the Data;

(b) store the Data on its IT systems; and

(c) process the Data.

(i) for the SME Permitted Use during the Term.

3.2 Except as expressly provided in this Agreement, the SME shall not:

(a) use the Data for any purpose whatsoever other than the SME Permitted Use;

(b) use the Data (wholly or in part) in its products or services; or

(c) redistribute the Data (wholly or in part) to any third parties.

4. Intellectual Property

4.1 The University and the SME acknowledge that:

(a) all Intellectual Property Rights in the Data shall at all times remain the property of University or its licensors;

(b) all Intellectual Property Rights in the SME Data shall at all times remain the property of the SME or its licensors;

(c) no licence or any proprietary right shall be granted to the SME other than as expressly set out in this Agreement for the SME Permitted Use; and

(d) The University or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the Data.

4.2 Any Intellectual Property Rights in the Results generated through the use of the Data, or the SME Data if applicable, for the SME Permitted Use shall be owned by the SME.

4.3 The SME grants to the University a non-exclusive, non-transferable licence to the Results generated by the SME in the Project arising from the use of the Data, such licence to be sub-licensable to the Data Provider:

(a) for a period of one (1) year after the end of Data Pitch.

(b) for the purpose of internal use, which may be commercial use; and

(c) for the avoidance of doubt, where the Results are software, the sub-licence granted allows for the use of the software by the Data Provider, but does not permit the commercial re-sale of that software by the Data Provider.

4.4 Neither Party shall use the other Party's name or logo in any press release, or for any other promotional purpose, without first obtaining the other Party's written consent.

5. SME Obligations

5.1 The SME shall:

- (a) only make such copies of the Data as are strictly required in relation to the SME Permitted Use;
- (b) not extract, re-utilise, use, exploit, redistribute, copy or store the Data other than for the SME Permitted Use or as expressly permitted by this Agreement;
- (c) in the event that the Data contains data that has been made subject to anonymisation techniques or Pseudonymisation Procedures, not attempt to reverse engineer, decrypt, de-anonymise, derive or otherwise re-identify such data;
- (d) In the event that the SME wishes to use SME data, it should notify the University by providing a description of each such dataset that it plans to use as described on page 2 of this Agreement; and
- (e) not do anything that may damage the reputation of the University.

- 5.2 The SME shall establish and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk to prevent the unauthorised or unlawful use or processing of the Data and against accident, alteration, actual loss or destruction of, or damage to, the Data, having regard to the state of technological development.
- 5.3 If the SME breaches its obligations under this Agreement or is investigated by any relevant regulator or it receives any request, claim, complaint, notice or communication in relation to the use of the Data, it shall immediately notify the University and shall co-operate fully with the University in relation to such matter and will enable the University or any relevant regulator to have prompt accompanied access during regular business hours to premises or operations where such Data is processed.
- 5.4 The SME shall notify the University promptly if any Data is or is suspected to have been lost or destroyed or become damaged, corrupted or unusable and shall restore such Data at its own expense.

6. University Obligations

- 6.1 The University shall provide the Data to the SME in accordance with the File Delivery Method.
- 6.2 Subject to Clause 6.3 and 6.4, and Clause 7, the University shall only provide Data that does not contain Personal Data.
- 6.3 In the event that the Data provided relates to natural persons that may be singled out from the Data, the University shall ensure that such data cannot be attributed to such persons and shall use all reasonable endeavours and take all due care to ensure that the risk of re-identification of such individuals from such data, whether alone or when processed together with other information in possession of either party, is minimised to the greatest extent possible given the nature of the Data.
- 6.4 In the event that the SME notifies the University that it wishes to use SME Data under the Project, such use will only be refused where privacy or data protection risks could reasonably be deemed to arise from combining such SME Data with the Data, or from combining discrete datasets in the SME Data alone, under the Project.

7. Data Protection

- 7.1 Subject to Clause 7.2, the Parties agree that the Data and/or the SME Data is not intended to contain any Personal Data and therefore the provisions of relevant Privacy and Data Protection Requirements will not apply to its transmission, storage and use.
- 7.2 To the extent that the Parties exchange any Data related to natural persons that may be singled out from such Data from which such persons become attributable and therefore the Data potentially contains Personal Data as part of the Project, the Parties shall comply in all respects with relevant Privacy and Data Protection Requirements for that Personal Data and in particular the Parties shall:
- (a) only use such Personal Data to the extent and in such manner as is permitted under this Agreement or the instructions of the other Party having regard to the provisions of the Privacy and Data Protection Requirements, or as is otherwise required by law;
 - (b) not transfer such Personal Data to any organisation or location situated outside of the European Economic Area, without the express prior written consent of the other Party, such consent may be subject to and given on terms that may prescribe an obligation to implement model data transfer clauses;
 - (c) not cause the other Party to breach any of its obligations under the Privacy and Data Protection Requirements;
 - (d) co-operate with the other Party to meet the requirements of any Data Subject access request received from a Data Subject; and
 - (e) not contact any individual identified by the Personal Data via any means on behalf of or in relation to the other Party and shall not procure any third party to do so on its behalf.

7.3 For the avoidance of doubt, to the extent that the Data is found by any court or competent authority to be Personal Data in any jurisdiction, the Parties acknowledge that for the purposes of the Privacy and Data Protection Requirements, this is not intended to preclude the possibility that a court or competent authority may find the SME to be a joint Data Controller.

7.4 In the event that there is a conflict between data protection laws or approaches to compliance of the United Kingdom and other territories where the parties to this Agreement are established, the requirements of the country that necessitates stricter or additional requirements to protect individuals' privacy and personal data shall be applied as long as these are in accordance with EU law.

8. Audit

8.1 The SME shall permit the University to carry out an audit to verify that the SME is complying with this Agreement in relation to its use and storage of the Data and in relation to any due diligence activities that the University may reasonably undertake on the SME Data on condition that the University:

- (a) gives reasonable notice of any such audit and conducts such audit during normal working hours;
- (b) observes the SME's security and confidentiality procedures in relation to the protection of Confidential Information concerning any clients or customers of the SME;
- (c) complies with the SME's reasonable regulations governing security and health and safety as have been notified to it in advance; and
- (d) takes all reasonable steps to minimise disruption to the SME's business or research activities during such audit.

9. Confidentiality and Publication

9.1 Each Party shall treat the Confidential Information with the same degree of care and apply no lesser security measures than it affords to its own confidential information and shall use reasonable endeavours to ensure that these measures provide adequate protection against unauthorised disclosure, copying or use.

9.2 Both Parties shall use reasonable endeavours not to disclose the Confidential Information to any third party, save for those directors, officers or employees who need to know it strictly for the purpose of exercising or performing its rights and obligations under this Agreement.

9.3 The obligations of confidentiality in this Clause 9 shall continue for a period of five (5) years after the termination/expiry of this Agreement but shall not apply to information if:

- (a) it is required to be disclosed by law, court order or other authority of competent jurisdiction or any regulatory or government authority to which it is subject, but in each case only to the extent required and for the purpose of such disclosure;
- (b) the information has entered the public domain through no fault of the other Party;
- (c) the information is developed independently without recourse to the Confidential Information;
or
- (d) the other Party has given its consent in writing in advance.

- 9.4 All Confidential Information of the University and copies of it shall be returned to the University within thirty (30) days of receipt of a request from the University or on the Termination Date, whichever is the later. For the avoidance of doubt each Party shall retain the right to keep copies of Confidential Information on their back up system provided that it is not accessed.
- 9.5 The University may, by giving written notice to the SME, require that the SME (and any employee of the SME) delays the publication of any information or knowledge by ninety (90) days where, in its reasonable opinion, such delay is necessary for the University to seek protection of its (and its licensor's) Intellectual Property Rights or to prevent the publication of Confidential Information.
- 9.6 Nothing in this Agreement shall prevent the University from having recourse to a court of competent jurisdiction for the purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage in relation to its Intellectual Property Rights or Confidential Information.
- 9.7 All Confidential Information of the University and copies of it shall be returned to the University within thirty (30) days of receipt of a request from the University or on the Termination Date, whichever is the later. For the avoidance of doubt each Party shall retain the right to keep copies of Confidential Information on their back up system provided that it is not accessed.
- 9.8 The University may, by giving written notice to the SME, require that the SME (and any employee of the SME) delays the publication of any information or knowledge by ninety (90) days where, in its reasonable opinion, such delay is necessary for the University to seek protection of its (and its licensor's) Intellectual Property Rights or to prevent the publication of Confidential Information.
- 9.9 Nothing in this Agreement shall prevent the University from having recourse to a court of competent jurisdiction for the purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage in relation to its Intellectual Property Rights or Confidential Information.

10. Warranties

- 10.1 Each Party represents and warrants that they shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. Breach of this clause shall be deemed a material breach of this Agreement that cannot be remedied and shall entitle either Party to terminate this Agreement with immediate effect.
- 10.2 The University warrants that it has the right to license the receipt and use of the Data and that the Data provided:
- (a) does not infringe the Intellectual Property Rights of any third party; and
 - (b) does not contain Personal Data, including because it was subject to adequate anonymisation techniques, pursuant to the obligations set out in Clauses 6 and 7, prior to its disclosure for the purpose of its use by the SME; or
 - (c) contains Personal Data but that Personal Data has been subject to Pseudonymisation Procedures and any other relevant measures such that the risk of re-identification of individuals is minimised pursuant to the obligations set out in Clause 6 prior to its disclosure for the purpose of its use by the SME.
- 10.3 The SME warrants that it has the right to use the SME Data for the Project and to license the use of the Results, including any Results arising from the use of SME Data, and that the SME Data:
- (a) does not infringe the Intellectual Property Rights of any third party;
 - (b) does not contain Personal Data, including because the SME Data was subject to adequate anonymisation techniques, pursuant to the obligations set out in Clauses 6 and 7; or
 - (c) contains Personal Data but that Personal Data has been subject to Pseudonymisation Procedures and any other relevant measures such that the risk of re-identification of individuals is minimised pursuant to the obligations set out in Clause 6 prior to its use by the SME.

- 10.4 The SME warrants that, in respect of personal data processing activities carried out in EU Member States where pre-registration of such activities is required, it has a valid registration with the relevant Data Protection Authority which, by the time that the Data sharing is expected to commence, will cover the processing of the Data and the SME Data (if applicable) pursuant to this Agreement in the relevant jurisdiction unless an exemption applies. The details are as follows:
- (a) [SME]: [Registration number [.....] OR explain exemption to registration].
- 10.5 The University warrants that it has a valid registration with its national Data Protection Authority which, by the time that the data sharing is expected to commence, covers any personal data processing activities of the Data pursuant to this Agreement, The details are as follows:
- (a) University of Southampton: Registration number Z6801020.
- 10.6 All other warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 10.7 Without limiting the effect of clause 10.2, neither Party warrants that the Data, the SME Data or the Results are accurate, complete, reliable, useful, fit for purpose or timely.
- 11. Term and Termination**
- 11.1 This Agreement shall commence on the Date of this Agreement as stated on Page 1 and shall expire automatically without notice on the Termination Date.
- 11.2 Either Party may by notice in writing immediately terminate this Agreement, if:
- (a) the other Party commits a material breach of this Agreement which in the case of a breach capable of remedy has not been remedied within thirty (30) days of the receipt of a notice identifying the breach and requiring its remedy;
- (b) the other Party passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the winding-up or dissolution;
- (c) any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to the other Party or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession or sells, any of the other Party's assets; or
- (d) the other Party is unable to pay its debts (within the meaning of Section 123, Insolvency Act 1986), ceases for any reason to carry on business or takes or suffers any similar action which in its opinion means that the other Party may be unable to pay its debts.
- 11.3 Without prejudice to clauses 11.1 and 11.2, the University may by notice in writing immediately terminate or suspend this Agreement if:
- (a) the SME commits a material breach of this Agreement that is incapable of remedy; or
- (b) the Data Pitch Contract is terminated; or
- (c) the Agreement between the University and the Data Provider is terminated; or
- (d) the European Commission terminates Data Pitch; or
- (e) the University is unable to licence or share the Data with the SME for any reason.
- 11.4 On termination or expiry of this Agreement and unless otherwise expressly stated, all rights and obligations of the University and SME shall immediately cease to have effect and the SME shall immediately cease all use of the Data and in accordance with clause 9.4 promptly return the Data and Confidential Information to the University and delete all copies of the Data from its systems.

12. Entire Agreement

- 12.1 This Agreement and the Data Pitch Contract sets out the entire agreement and understanding between the Parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement.
- 12.2 In case of any conflict between this Agreement and the provisions of the Data Pitch Contract, the provisions of the Data Pitch Contract shall prevail save that this Agreement shall prevail for all matters relating to the terms under which the Data is shared and any rights related to the Data or the SME Data.

13. Assignment and Sub-licensing

- 13.1 The SME shall not assign, transfer, charge or otherwise encumber, declare a trust over or deal in any other manner with this Agreement or any right, benefit or interest under it, or sub-license or sub-contract any of its obligations under it, without the prior written consent of the University.

14. Waiver

- 14.1 Any failure or delay of either Party to enforce or to exercise, at any time or for any period of time, any term or any right arising pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect such Party's right to enforce and exercise it.
- 14.2 A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed by an authorised signatory of the Party who is waiving the breach or provision. Any waiver of a breach of the term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.

15. Variation

- 15.1 Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

16. Invalidity

- 16.1 To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

17. Exclusion of Third Party Rights

- 17.1 No term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it.

18. Governing Law and Jurisdiction

- 18.1 This Agreement shall be governed by and construed in accordance with English law including non-contractual claims and disputes.
- 18.2 The Parties will attempt to settle any dispute or claim arising in accordance with the WIPO Mediation Rules. The place of mediation shall be London and the language used shall be English.
- 18.3 In the event that any dispute or claim cannot be resolved by mediation, each of the Parties irrevocably submits for all purposes in connection with this Agreement including non-contractual claims and disputes to arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be London and the language used in the arbitral proceedings shall be English unless otherwise agreed upon.

19. Counterparts

- 19.1 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until both Parties have executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

19.2 Executed copies of the signature pages of this Agreement transmitted electronically in either Tagged Image Format Files (TIFF) or Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the Parties waive any rights they may have to object to such treatment, provided that this treatment shall be without prejudice to the obligation of the Parties to exchange original signatures as quickly as practicable after execution of this Agreement.

20. Liability

20.1 Except for that which cannot be limited by law, including death or personal injury as a result of a Party's negligence and save for claims under the indemnity in Clause 20.2, the maximum liability for one Party to the other shall not exceed £10,000 (ten thousand pounds).

20.2 The University shall indemnify the SME for any and all losses, expenses, costs, proceedings or claims suffered by the SME as a result of a breach of the warranties in Clause 10.2 and the SME shall indemnify the University for any and all losses, expenses, costs, proceedings or claims suffered by the University as a result of a breach of the warranties in Clause 10.3.

20.3 Subject to clause 20.1 and 20.2, neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any losses, expenses, costs, proceedings or claims arising in connection with the performance or contemplated performance of this Agreement or any collateral contracts, including but not limited to any:

- (a) loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill; or
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) loss or liability (whether direct or indirect) under or in relation to any other contract.

This Agreement has been signed on the date stated as the "Date of Agreement" on page 1 of this Agreement.

Annex II - Data Provider Contract Template

THIS AGREEMENT is dated at the date of the last signature below.

Between

- (1) [FULL COMPANY NAME] incorporated and registered in [] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the Data Provider).
- (2) UNIVERSITY OF SOUTHAMPTON, RC000668, established in Highfield, SOUTHAMPTON SO17 1BJ, United Kingdom, VAT number GB568630414 (the University).

Each a "Party" and together the "Parties".

Date of Agreement (date of signature): [Add date]

The Parties agree to be bound by the Agreement (as defined in sub-clause 1.1 (Definitions and interpretation) of the attached terms and conditions).

<p>Signed on behalf of</p> <p>Name: _____</p> <p>Signature: _____</p> <p>Date: _____</p>	<p>Signed on behalf of University of Southampton</p> <p>Name: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
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Data	<p>Add description of the Data to be provided including whether the Data:</p> <ul style="list-style-type: none"> • has been subject to any anonymisation procedures (detailed below); or • has been subject to Pseudonymisation Procedures (as defined) and as detailed below. <p>Note that the Data must not include Personal Data save to the extent that Pseudonymisation Procedures have been applied to, and any other relevant measures have been taken, to reduce re-identification risk from the Data as far as reasonably possible.</p>
Anonymisation techniques	Describe any anonymisation procedures used for the Data
Pseudonymisation Procedures	Describe any Pseudonymisation Procedures used for the Data
Datathon Data (if applicable)	Add a description of the sub-set of the Data that is able to be used for the purposes of a Datathon.
File Delivery Method	<p>Describe the medium of transfer of the Data, for example:</p> <p><i>The medium of transfer will depend on the size of the files and will either be an upload to the University, or a physical medium such as CD, DVD, memory stick or hard drive. Whichever option is used, the physical medium will be password protected with passwords transmitted separately.</i></p> <p><i>The data will be a one off delivery and routine updates are not anticipated.</i></p>

Termination Date	[Add date]
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Background:

- (A) The University is the lead coordinator of the Horizon 2020 funded European Project, Data Pitch (the "Project") which will provide the technological and legal infrastructure for the owners of data sets to share their data in a secure and reliable environment and for SMEs to experiment with that Data as part of the Project.
- (B) The Data Provider has agreed to provide the Data to the University for the Project and as further specified in the University Permitted Use (as defined) which includes sharing the Data with SME Participants (as defined) and third parties involved in the Project for research purposes only.
- (C) The University has agreed that it will only use the Data for the University Permitted Use and on the terms of and subject to the conditions of this Agreement.
- (D) The University has agreed to sub-license the results of the research activities of the SME Participants generated from using the Data as part of the Project to the Data Provider.

It is agreed as follows:

1. Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"**Agreement**" means this Agreement (including any schedule or annexure to it and any document in agreed form).

"**Confidential Information**" means any commercial or technical information in whatever form or medium which is disclosed by one Party (the "**Disclosing Party**") including in the case of Data Provider, a company in the Data Provider Group, to the other Party and Confidential Information shall include, without limitation:

- (a) all business, statistical, financial, technical, marketing and personnel information, customer or supplier details, know-how, designs, trade secrets, methodologies or software; and
- (b) all Intellectual Property Rights of the Disclosing Party or its licensors,

but excluding the Data unless it is identified as Confidential Information.

"Data" means as described on page 2 of this Agreement and includes Datathon Data if relevant.

"Data Protection Authority" means the relevant data protection authority in the territories where the parties to this Agreement are established.

"Data Protection Directive" means the EU Data Protection Directive (95/46/EC) of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

"**Data Provider Group**" means the Data Provider and its subsidiaries and holding companies, "subsidiary" and "holding company" having the meanings ascribed to those terms in Section 1159, Companies Act 2006.

"Data Controller" means as defined in the DPA, the Data Protection Directive before 25 May 2018, and the General Data Protection Regulation from 25 May 2018 onwards.

"Data Processor" means as defined in the DPA, the Data Protection Directive before 25 May 2018, and the General Data Protection Regulation from 25 May 2018 onwards.

"Data Subject" means as defined in the DPA, the Data Protection Directive before 25 May 2018, and

the General Data Protection Regulation from 25 May 2018 onwards.

"Datathon" means an intense workshop that asks participants to utilise the Datathon Data provided to answer performance driven questions or to develop innovative commercialisation opportunities using Data.

"Datathon Data" means a sub-set or independent set of Data where this is provided by the Data Provider for use as part of a Datathon and as described on page 2 of this Agreement.

"DPA" means the UK Data Protection Act 1998 (as amended).

"General Data Protection Regulation" means the EU General Data Protection Regulation ((EU) Regulation (2016/679) 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, and repealing Directive 95/46/EC.

"File Delivery Method" means as described on page 2 of this Agreement.

"Intellectual Property Rights" means all industrial and intellectual property rights including patents, utility models, rights in inventions, registered designs, rights in designs, trademarks, copyright and neighbouring rights, database rights, moral rights, trade secrets, and rights in confidential information and know-how (all whether registered or unregistered and including any renewals and extensions thereof) and all rights or forms of protection having equivalent or similar effect to any of these which may subsist anywhere in the world and the right to apply for registrations of any of the foregoing.

"Personal Data" means as defined in the Data Protection Directive before 25 May 2018; and the General Data Protection Regulation from 25 May 2018 onwards.

"Privacy and Data Protection Requirements" means the Data Protection Act 1998 (the DPA), the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC) and any new EU law repealing that legislation where it applies during the Term of this Agreement, the General Data Protection Regulation ((EU) Regulation (2016/679), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other national Data Protection Authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

"Pseudonymisation Procedures" means the processing of Personal Data in such a manner that the Personal Data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the Personal Data are not attributed to an identified or identifiable natural person.

"Results" means any tangible or intangible outputs of the Project such as data knowledge or information, in whatever form or nature, whether it can be protected or not, that are generated by the SME Participant in the Project, as well as any Intellectual Property Rights attached to it.

"SME Participant" means an organisation that fulfils the definitional criteria of a H2020-funded project Small to Medium sized enterprise and is selected as part of the Project for funding to support a proposal which utilises the Data.

"Term" means the period commencing on the date of this Agreement and ending on the Termination Date.

"Termination Date" means as described on page 2 of this Agreement.

"University Permitted Use" means the storage, hosting, sharing and distribution of the Data including the Datathon Data in accordance with the licence in Clause 3 for the purpose of:

- (a) the conduct of Datathons; and
- (b) the incubation of SME Participants after their selection for funding,

each as part of the Project.

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
 - (b) a reference to:
 - (i) any Party includes its successors in title and permitted assigns;
 - (ii) a "person" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);
 - (iii) clauses are to clauses of this Agreement; and
 - (c) the headings are for convenience only and shall not affect the interpretation of this Agreement.
2. Consideration
- 1.3 In consideration of the mutual exchange of information by the Parties under this Agreement:
- (a) Data Provider agrees to supply the Data in accordance with this Agreement; and
 - (b) the University agrees to use the Data for the University Permitted Use and to sub-license the Results of the research activities of the SME Participants generated from using the Data as part of the Project in accordance with this Agreement.
- 1.4 The Parties shall each be responsible for their own costs incurred in negotiating and performing their respective obligations under this Agreement.
2. Licence
- 2.1 Subject to Clause 3.2, Data Provider grants to the University a non-exclusive, non-transferable, revocable licence, to:
- (a) access, view and combine or aggregate the Data with other data or information or adapt the Data; and
 - (b) store the Data on its IT systems,
- for the University Permitted Use during the Term.
- 2.2 Data Provider grants to the University the right to sub-license:
- (a) Datathon Data to third parties to use for research purposes for participation in a Datathon; and
 - (b) Data to SME Participants to use for research purposes in the Project.
- 2.3 Except as expressly provided in this Agreement, the University shall not:
- (a) use the Data for any purpose whatsoever other than the University Permitted Use;
 - (b) use the Data (wholly or in part) in its products or services; or
 - (c) redistribute the Data (wholly or in part) to any third parties.
2. Intellectual Property
- 2.1 The University acknowledges that:
- (a) all Intellectual Property Rights in the Data shall at all times remain the property of Data Provider or its licensors;
 - (b) no licence or any proprietary right shall be granted to the University other than as expressly set out in this Agreement for the University Permitted Use; and
 - (c) Data Provider or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development,

presentation and supply of the Data.

2.2 Any Intellectual Property Rights in the Results shall be owned by the SME Participants that generated it. SME Participants will be required to grant a non-exclusive licence to the University to use Intellectual Property Rights in the Results as part of the Project which shall be sub-licensable to the Data Provider.

2.3 Data Provider agrees (where it is free and reasonably able to do so) to license any Data that may be required to enable the University or an SME Participant to exploit such Intellectual Property Rights in the Results after the Term for research purposes.

2.4 The University grants to Data Provider a non-exclusive, non-transferable, sub-licence to the Results generated by the SME Participant in the Project for a period of one (1) year after the end of the Project for the purpose of internal use, which may be commercial use, and for the avoidance of doubt, where the Results are software, the sub-licence granted allows for the use of the software by the Data Provider, but does not permit the commercial re-sale of that software by the Data Provider.

2.5 Neither Party shall use the other Party's name or logo in any press release, or for any other promotional purpose, without first obtaining the other Party's written consent.

3. The University's Obligations

3.1 The University shall:

(a) only make such copies of the Data as are strictly required in relation to the University Permitted Use;

(b) not extract, re-utilise, use, exploit, redistribute, copy or store the Data other than for the University Permitted Use or as expressly permitted by this Agreement;

(c) in the event that the Data contains data that has been made subject to anonymisation techniques or Pseudonymisation Procedures, not attempt to reverse engineer, decrypt, de-anonymise, derive or otherwise re-identify such data; and

(d) not do anything that may damage the reputation of Data Provider.

3.2 The University shall establish and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk to prevent the unauthorised or unlawful use or processing of the Data and against accident, alteration, actual loss or destruction of, or damage to, the Data, having regard to the state of technological development.

3.3 The University will enter into agreements with third parties for Datathon participation and SME Participants for incubation in terms that are consistent with the terms of this Agreement.

3.4 If the University breaches its obligations under this Agreement or is investigated by any relevant regulator or it receives any request, claim, complaint, notice or communication in relation to the use of the Data, it shall immediately notify Data Provider and shall co-operate fully with Data Provider in relation to such matter and will enable Data Provider or any relevant regulator to have prompt accompanied access during regular business hours to premises or operations where such Data is processed.

3.5 The University shall notify Data Provider promptly if any Data is or is suspected to have been lost or destroyed or become damaged, corrupted or unusable and shall restore such Data at its own expense.

4. Data Provider's Obligations

4.1 Data Provider shall provide the Data to the University in accordance with the File Delivery Method.

4.2 Subject to Clause 6.3 and 6.4, and Clause 7, Data Provider shall only provide Data that does not contain Personal Data.

4.3 In the event that the Data provided relates to natural persons that may be singled out from the data, Data Provider shall ensure that such data cannot be attributed to such persons and shall use all reasonable endeavours and take all due care to ensure that the risk of re-identification of such individuals from such data, whether alone or when processed together with other information in

possession of either party, is minimised to the greatest extent possible given the nature of the Data.

4.4 The Data Provider shall disclose to the University the anonymisation techniques and Pseudonymisation Procedures used by Data Provider where the Data provided relates to natural persons and such procedures and techniques shall meet the requirements of all reasonable endeavours to prevent such persons becoming identifiable from such Data, according to the standards set out in Recital 26 of the Data Protection Directive before 25 May 2018, and Recital 26 of the General Data Protection Regulation after that date. Data Provider shall use all due care by following the guidance provided by the EU Article 29 Data Protection Working Party "Opinion 05/2014 on Anonymisation Techniques".

4.5 Subject to the provisions of Clause 9 (Confidentiality and Publication), the Data Provider agrees that the University may use the information provided in Clause 6.4 on the anonymisation procedures and Pseudonymisation Procedures (if any) that the Data Providers has used for the Data and may disclose such information as part of the Project, including public disclosure as part of an academic paper or otherwise, however, for the avoidance of doubt, the identity of the Data Provider for each anonymisation technique will not be disclosed.

5. Data Protection

5.1 Subject to Clause 7.2, the Parties agree that the Data is not intended to contain any Personal Data and therefore the provisions of relevant Privacy and Data Protection Requirements will not apply to its transmission, storage and use.

5.2 To the extent that the Parties exchange any Data related to natural persons that may be singled out from such Data from which such persons become attributable and therefore the Data potentially contains Personal Data as part of the Project, the Parties shall comply in all respects with relevant Privacy and Data Protection Requirements for that Personal Data and in particular the Parties shall:

- (a) only use such Personal Data to the extent and in such manner as is permitted under this Agreement or the instructions of the other Party having regard to the provisions of the Privacy and Data Protection Requirements, or as is otherwise required by law;
- (b) not transfer such Personal Data to any organisation or location situated outside of the European Economic Area, without the express prior written consent of the other Party, such consent may be subject to and given on terms that may prescribe an obligation to implement model data transfer clauses;
- (c) not cause the other Party to breach any of its obligations under the Privacy and Data Protection Requirements;
- (d) co-operate with the other Party to meet the requirements of any Data Subject access request received from a Data Subject; and
- (e) not contact any individual identified by the Personal Data via any means on behalf of or in relation to the other Party and shall not procure any third party to do so on its behalf.

5.3 For the avoidance of doubt, to the extent that the Data is found by any court or competent authority to be Personal Data in any jurisdiction, the Parties acknowledge that for the purposes of the Data Protection Act 1998, the Data Protection Directive, and the General Data Protection Regulation, the Data Provider is the Data Controller and the University is the Data Processor of such Personal Data. This acknowledgement by the Parties is not intended to preclude the possibility that a court or competent authority may find the SME Participant to be joint Data Controller with the Data Provider, depending on the arrangements to be put in place by which any such Personal Data may be stored in the Project.

5.4 In the event that the data protection laws or approaches to compliance of the United Kingdom and other territories where the parties to this Agreement are established conflict, the requirements of the country that necessitates stricter or additional requirements to protect individuals' privacy and personal data shall be applied as long as these are in accordance with EU law.

6. Audit

6.1 The University shall permit Data Provider to carry out an audit to verify that the University is complying with this Agreement in relation to its use and storage of the Data on condition that Data Provider:

- (a) gives reasonable notice of any such audit and conducts such audit during normal working hours;
- (b) observes the University's security and confidentiality procedures in relation to the protection of Confidential Information concerning any clients or customers of the University;
- (c) complies with the University's reasonable regulations governing security and health and safety as have been notified to it in advance; and
- (d) takes all reasonable steps to minimise disruption to the University's business or research activities during such audit.

7. Confidentiality and Publication

7.1 Each Party shall treat the Confidential Information with the same degree of care and apply no lesser security measures than it affords to its own confidential information and shall use reasonable endeavours to ensure that these measures provide adequate protection against unauthorised disclosure, copying or use.

7.2 Both Parties shall use reasonable endeavours not to disclose the Confidential Information to any third party, save for those directors, officers or employees and any relevant SME Participant who need to know it strictly for the purpose of exercising or performing its rights and obligations under this Agreement.

7.3 The obligations of confidentiality in this Clause 9 shall continue for a period of five (5) years after the termination/expiry of this Agreement but shall not apply to information if:

- (a) it is required to be disclosed by law, court order or other authority of competent jurisdiction or any regulatory or government authority to which it is subject, but in each case only to the extent required and for the purpose of such disclosure;
- (b) the information has entered the public domain through no fault of the other Party;
- (c) the information is developed independently without recourse to the Confidential Information; or
- (d) the other Party has given its consent in writing in advance.

7.4 All Confidential Information of Data Provider and copies of it shall be returned to Data Provider within thirty (30) days of receipt of a request from Data Provider or on the Termination Date, whichever is the later. For the avoidance of doubt each Party shall retain the right to keep copies of Confidential Information on their back up system provided that it is not accessed.

7.5 Data Provider agrees that any employee of the University may publish any information or knowledge arising out of its use of the Data, including but not limited to information related to the type of Data, its format, presentation and other attributes of the Data, in accordance with this Agreement in relation to an academic publication, provided that the University ensures that the employee:

- (a) complies at all times with clauses 4, 7 and 9 of this Agreement and any regulations or procedures affecting the publication of such knowledge;
- (b) provides a copy of all information or knowledge which is intended to be published to Data Provider at least thirty (30) days prior to the proposed date of publication; and
- (c) where it receives a notice in accordance with clause 9.6 below, delays publication of the information or knowledge by at least a further ninety (90) days.

7.6 Data Provider may, by giving written notice to the University, require that the University (and

any employee of the University) delays the publication of any information or knowledge by ninety (90) days where, in its reasonable opinion, such delay is necessary for Data Provider to seek protection of its (and its licensor's) Intellectual Property Rights or to prevent the publication of Confidential Information.

7.7 Nothing in this Agreement shall prevent Data Provider from having recourse to a court of competent jurisdiction for the purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage in relation to its Intellectual Property Rights or Confidential Information.

8. Warranties

8.1 Each Party represents and warrants that they shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. Breach of this clause shall be deemed a material breach of this Agreement that cannot be remedied and shall entitle either Party to terminate this Agreement with immediate effect.

8.2 Data Provider warrants that it has the right to license the receipt and use of the Data and that the Data provided:

(a) does not infringe the Intellectual Property Rights of any third party; and

(b) does not contain Personal Data, including because it was subject to adequate anonymisation techniques, pursuant to the obligations set out in Clauses 6 and 7, prior to its disclosure for the purpose of its use by the University or its sub-licensees; or

(c) contains Personal Data but that Personal Data has been subject to Pseudonymisation Procedures and any other relevant measures such that the risk of re-identification of individuals is minimised pursuant to the obligations set out in Clause 6 prior to its disclosure for the purpose of its use by the University's sub-licensees.

8.3 Each Party warrants that it has a valid registration with its national Data Protection Authority which, by the time that the data sharing is expected to commence, covers the sharing of the Data pursuant to this Agreement, unless an exemption applies. The details are as follows:

(a) University of Southampton: Registration number Z6801020.

(b) [Data Provider]: [Registration number [.....]] OR explain exemption to registration].

8.4 All other warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

8.5 Without limiting the effect of clause 10.2, neither Party warrants that the Data or the Results are accurate, complete, reliable, useful, fit for purpose or timely and further the University excludes any warranty for third party infringement of the Intellectual Property Rights in the Results.

9. Term and Termination

9.1 This Agreement shall commence on the Date of this Agreement as stated on Page 1 and shall expire automatically without notice on the Termination Date.

9.2 Either Party may by notice in writing immediately terminate this Agreement, if:

(a) the other Party commits a material breach of this Agreement which in the case of a breach capable of remedy has not been remedied within thirty (30) days of the receipt of a notice identifying the breach and requiring its remedy;

(b) the other Party passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the winding-up or dissolution;

(c) any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to the other Party or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession or sells, any of the other Party's assets; or

(d) the other Party is unable to pay its debts (within the meaning of Section 123,

Insolvency Act 1986), ceases for any reason to carry on business or takes or suffers any similar action which in its opinion means that the other Party may be unable to pay its debts.

9.3 Without prejudice to clauses 11.1 and 11.2, Data Provider may by notice in writing immediately terminate this Agreement or suspend the licence granted under this Agreement:

(a) if the University commits a material breach of this Agreement that is incapable of remedy; or

(b) if Data Provider reasonably believes there is no longer valid reasons for the University's continued access to the Data.

9.4 On termination or expiry of this Agreement and unless otherwise expressly stated, all rights and obligations of the University and Data Provider shall immediately cease to have effect and the University shall immediately cease all use of the Data and in accordance with clause 9.4 promptly return the Data and Confidential Information to Data Provider.

10. Entire Agreement

10.1 This Agreement sets out the entire agreement and understanding between the Parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement.

11. Assignment and Sub-licensing

11.1 The University shall have the right to sub-licence the Data to the SME Participants and third parties involved in the Project for the University Permitted Purpose.

11.2 Subject to the permission granted in Clause 13.1, the University shall not assign, transfer, charge or otherwise encumber, declare a trust over or deal in any other manner with this Agreement or any right, benefit or interest under it, or sub-licence or sub-contract any of its obligations under it, without the prior written consent of Data Provider.

12. Waiver

12.1 Any failure or delay of either Party to enforce or to exercise, at any time or for any period of time, any term or any right arising pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect such Party's right to enforce and exercise it.

12.2 A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed by an authorised signatory of the Party who is waiving the breach or provision. Any waiver of a breach of the term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.

13. Variation

13.1 Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

14. Invalidity

14.1 To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

15. Exclusion of Third Party Rights

15.1 No term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it.

16. Governing Law and Jurisdiction

16.1 This Agreement shall be governed by and construed in accordance with English law.

16.2 The Parties will attempt to settle any dispute or claim arising in accordance with the WIPO Mediation Rules. The place of mediation shall be London and the language used shall be English.

16.3 In the event that any dispute or claim cannot be resolved by mediation, each of the Parties irrevocably submits for all purposes in connection with this Agreement including non-contractual claims and disputes to arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be London and language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

17. Counterparts

17.1 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until both Parties have executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

18. Liability

18.1 Except for that which cannot be limited by law, including death or person injury as a result of a Party's negligence and save for claims under the indemnity in Clause 20.2, the maximum liability for one Party to the other shall not exceed £10,000 (ten thousand pounds).

18.2 Data Provider shall indemnify the University for any and all losses, expenses, costs, proceedings or claims suffered by the University as a result of a breach of the warranties in Clause 10.2 save for any breach that is a result of the University's breach of its obligations in Clause 5.1(c).

18.3 Subject to clause 20.1 and 20.2, neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any losses, expenses, costs, proceedings or claims arising in connection with the performance or contemplated performance of this Agreement or any collateral contracts, including but not limited to any:

- (a) loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill; or
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) loss or liability (whether direct or indirect) under or in relation to any other contract.

This Agreement has been signed on the date stated as the "Date of Agreement" on page 1 of this Agreement.