

Data Pitch

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D3.7 Data Legality Report v2

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Table of Contents

List of tables	5
Abbreviations	5
Abstract	6
Executive summary	7
1. Introduction	10
1.1 Objective	10
1.1.1 Four types of data shared and re-used for review and innovation purposes	10
1.2 Report overview	11
2. Key Contractual Templates	12
2.1 Brief overview	12
2.2 Data Provider (Data Sharing) Agreement (final version: 12 April 2017)	12
2.2.1 Brief description	12
2.2.2 Current status	13
2.2.3 Deviation from the Data Provider (Data Sharing) Agreement	13
2.3 SME Contract (final version: 29 June 2017)	13
2.3.1 Brief description	13
2.3.2 Current status	14
2.4 SME Self-Sourced Data Contract (draft version: 12 July 2018)	14
2.4.1 Brief description	14
2.4.2 Current status	14
2.4.3 Comparison with the SME Contract template	14
3. Sample Data Terms (draft version: 11 July 2018)	18
3.1 Brief overview	18
3.2 The motivation to provide Sample Data	18
3.3 The need for Sample Data Terms	18
3.4 Practicalities	18
4. Summary	20
4.1 Updates to the pre-existing contractual templates	20
4.2 New additions	20
Annex I - SME Self-Sourced Data Contract (draft version: v2 - 21 June 2018)	21
Contracting parties	21
1. General provisions	21
2. Entry into force of the contract and termination	21
3. Performance obligations and responsibilities of the Company	22
4. Conflict of Interests	23
5. Breach of contractual obligations	23
6. Funding and financial provisions	23

7. Liability of the Company	24
8. Confidentiality	24
9. Intellectual property rights	25
10. Force majeure	26
11. Information, and Dissemination	26
12. Financial audits and controls	27
13. Termination and Suspension	28
14. Language	28
15. Amendments	28
16. Applicable law	28
17. Settlement of disputes	28
Annex 1 Project description	29
Annex 2 Guide for applicants	29
Annex 3: Bank account information form	30
Annex 4: Declaration of honour	30
Annex 5: Administrative data form	30
Annex 6: SME validation information	30
Annex 7: Data Sharing Agreement	31
Annex II - Annexure 7: SME Self-Sourced Data Contract (draft version: v4 - 12 July 2018)	31
Annexure 7: SME Self-Sourced Data Sharing Agreement	31
1. Definitions and interpretation	32
2. Consideration	34
3. Intellectual Property	34
4. SME Obligations	34
5. University Obligations	35
6. Data Protection	35
7. Audit	36
8. Confidentiality and Publication	36
9. Warranties	37
10. Term and Termination	37
11. Entire Agreement	38
12. Assignment and Sub-licensing	38
13. Waiver	38
14. Variation	39
15. Invalidity	39
16. Exclusion of Third Party Rights	39
17. Governing Law and Jurisdiction	39
18. Counterparts	39
19. Liability	39
Annex III: Draft Sample Data Terms (draft version: 11 July 2018)	41

Data Pitch Sample Data Terms	41
Background	41
Definitions and interpretation	41
2. Consideration	43
3. Licence	43
4. Intellectual Property	43
5. SME Obligations	43
6. University Obligations	44
7. Data Protection	44
8. Confidentiality	44
9. Warranties	45
10. Term and Termination	45
11. Entire Agreement	46
12. Waiver	46
13. Invalidity	46
14. Exclusion of Third Party Rights	46
15. Governing Law and Jurisdiction	46
16. Liability	46

List of tables

Table 1 - Overview table of the three key contractual templates (to be) used during the course of the Data Pitch programme (p. 8 and p. 12).

Table 2 - Comparative table that provides an overview of the fourteen main differences between the SME Contract template and the Self-Sourced Data Contract draft template (pp.14-17).

Abbreviations

CSV = comma-separated values

SME = small or medium enterprise

M8 = Month 8

ODINE = Open Data Incubator

v1 = version 1

v2 = version 2

XLS = eXcel Spreadsheet

Abstract

The Data Legality Report v2 is conceived as a periodic update to Data Legality Report v1, which was delivered in M8 of the Data Pitch programme (August 2017). The objective of these two legality reports is to provide an overview of the contractual basis on which data are shared and (re-)used for review and/or innovation purposes by SMEs during the two calls of the Data Pitch programme. The Data Legality Report v2 is split into three parts. Section 2 provides an overview of the three key contractual templates that govern the sharing and re-usage of Data Provider Data and SME (Self-Sourced) Data as part of the Data Pitch programme by: (a) reporting on the status of the two key contractual templates (to be) utilised during the first and second calls of the Data Pitch programme - (i) Data Provider (Data Sharing) Agreement and (ii) SME Contract; and (b) introducing a new key contractual template to be utilised as part of call 2 (subject to final approval) - (iii) draft SME Self-Sourced Data Contract. Section 3 then focuses on the draft Sample Data Terms that an SME would have to comply with in order to re-use Sample Data for the purposes of review. Section 4 then summarises the key changes made to the Data Pitch contractual portfolio.

Executive summary

D3.7 data legality update: The Data Legality Report v2 is conceived as a periodic update to Data Legality Report v1, which was delivered in M8 of the Data Pitch programme (August 2017).

Objective: The aim of these two legality reports is to provide an overview of the contractual basis on which data are shared and (re-)used for review and/or innovation purposes by SMEs during the two calls of the Data Pitch programme. In particular, the Data Legality Report v2 describes any changes made to the existing contractual templates in the second call, and reflects on the need for such changes in light of process developments under the Project, including any operational insights.

Three parts: This overview is split into three parts: (a) examination of the three key contractual templates that govern the sharing and re-usage of Data Provider Data and SME (Self-Sourced) Data as part of the Data Pitch programme; (b) consideration of the draft Sample Data Terms that an SME would have to comply with in order to re-use Sample Data for the purposes of review; and (c) a summary of the key changes made to the Data Pitch contractual portfolio.

Types of data shared: There are four principal types of data that are shared and (re-)used for review and/or innovation purposes as part of the Data Pitch programme:

- 1. (Data Provider) Data.** These data are: (a) shared by a Data Provider under a signed Data Provider (Data Sharing) Agreement; and subsequently (b) re-used for innovation purposes by successful SMEs (as part of the data provider challenges track) pursuant to a signed SME Contract. Refer to section 2 of this report for further information.
- 2. SME Data.** These data are: (a) gathered and/or collected by a successful SME; and/or (b) obtained from a third party by an SME. These data can be (re-)used for innovation purposes alongside (Data Provider) Data - as part of the data provider challenges track - by successful SMEs (subject to conditions) under a signed SME Contract. Refer to section 2 of this report for further information.
- 3. SME Self-Sourced Data.** These data are: (a) gathered and/or collected by a successful SME; and/or (b) obtained from a third party by an SME. These data are (re-)used for innovation purposes - as part of the sectoral or open innovation challenges tracks - by successful SMEs (subject to conditions) under a signed SME Self-Sourced Data Contract. Refer to section 2 of this report for further information.
- 4. Sample Data.** These data are a subset of Data Provider Data that would be offered to SMEs (during call 2 - who are considering an application to a data providers challenge) for the purposes of review, i.e. to enable an SME to decide whether, and how, to respond to a competitive call as part of the Data Pitch project. Refer to section 3 of this report for further information.

Three key contractual templates - Data Provider Data and SME (Self-Sourced) Data: The following table (on p.8) provides an overview of these contractual templates used in the course of the Data Pitch programme:

Overview table of the three key contractual templates (to be) used during the course of the Data Pitch programme					
	Name	Current status	Used for challenge track(s)	Current version	Brief description
1	Data Provider (Data Sharing) Agreement*	Active: Calls 1 and 2	Data provider challenges	Final: 12 April 2017	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.
2	SME Contract	Active: Calls 1 and 2	Data provider challenges	Final: 29 June 2017	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.
3	SME Self-Sourced Data Contract	Draft (in the process of review): Call 2	Sectoral challenges and the open innovation challenge	Draft v2: 21 June 2018 (Plus Annexure 7 Draft v4: 12 July 2018)	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.
<p><i>*Note that it was necessary for one of the data providers (to the second call of the Data Pitch programme 2018-2019) to deviate from this key contractual template owing to special circumstances. Refer to section 2.2.3 of this report for further information.</i></p>					

SME Self-Sourced Data Contract (draft version: 12 July 2018): At the time of writing this report (21 August 2018), a draft version of the SME Self-Sourced Data Contract template - Data Pitch Contract for SMEs Self-Sourced Data (v2: 21 June 2018) and Annexure 7 (v3: 27 June 2018 (with modifications made on 12 July 2018)) - is undergoing internal review.

Sample Data Terms (draft version: 11 July 2018): As part of the second call of the Project (July-October 2018), the Data Pitch consortium would like to provide sample data to SMEs (who are considering applying to a data provider challenge) for review purposes. The motivation for providing these sample data is so that an SME could: (i) better-understand what data are being provided as part of a specific data provider challenge; and (ii) use this information to better inform their decision on how to respond to the challenge under consideration. It is important to note that SMEs would not be required to examine this sample data as part of their application process, nor would data providers be obligated to provide sample data for the purposes of SME review. At the time of writing this report (21 August 2018), Data Pitch has not yet received any Sample Data.

It is crucial that the SMEs have a clear understanding of their rights and obligations when accessing, visualising and/or downloading any Sample Data from the Dawex platform. The main purpose of the Sample Data Terms therefore is to define how these data are to be utilised by SMEs. Therefore, an SME would have to comply with these Sample Data Terms (draft) in order to

re-use Sample Data for the purposes of review.

Summary: Overall, no significant changes have been required to the two key contractual templates described by the last Data Legality Report (v1 - D3.3) delivered in August 2017: (i) Data Providers (Data Sharing) Agreement and (ii) SME Contract. However, there are two potential additions to the Data Pitch contractual portfolio since this last report: (iii) the SME Self-Sourced Data Contract draft template; and (iv) the draft Sample Data Terms.

1. Introduction

1.1 Objective

The Data Legality Report v2 is conceived as a periodic update to Data Legality Report v1, which was delivered in M8 of the Data Pitch programme (August 2017). The objective of these two legality reports is to provide an overview of the contractual basis on which data are shared and (re-)used for review and/or innovation purposes by SMEs (during the two calls of the Data Pitch programme). In particular, the Data Legality Report v2 describes any changes made to the existing contractual templates in the second call, and reflects on the need for such changes in light of process developments under the Project, including any operational insights.

1.1.1 Four types of data shared and re-used for review and innovation purposes

There are four principal types of data that are shared and (re-)used for review and/or innovation purposes as part of the Data Pitch programme:

1. **(Data Provider) Data.** These data are: (a) shared by a Data Provider under a signed Data Provider (Data Sharing) Agreement; and subsequently (b) re-used for innovation purposes by successful SMEs - as part of the data provider challenges track* - pursuant to a signed SME Contract. Refer to section 2 of this report for further information.
2. **SME Data.** These data are: (a) gathered and/or collected by a successful SME; and/or (b) obtained from a third party by an SME. These data can be (re-)used for innovation purposes alongside (Data Provider) Data - as part of the data provider challenges track - by successful SMEs (subject to conditions) under a signed SME Contract. Refer to section 2 of this report for further information.
3. **SME Self-Sourced Data.** These data are: (a) gathered and/or collected by a successful SME; and/or (b) obtained from a third party by an SME. These data are (re-)used for innovation purposes - as part of the sectoral or open innovation challenges tracks* - by successful SMEs (subject to conditions) under a signed SME Self-Sourced Data Contract. Refer to section 2 of this report for further information.
4. **Sample Data.** These data are a subset of Data Provider Data that would be offered to SMEs (during call 2 - who are considering an application to the data provider challenges track) for the purposes of review, i.e. to enable an SME to decide whether, and how, to respond to a competitive call as part of the Data Pitch project.¹ Refer to section 3 of this report for further information.

*Note that in the first call of the Data Pitch programme (2017-2018), there were twelve challenges and in the second call of the Data Pitch programme (2018-2019), there are sixteen challenges. Data Pitch sets its challenges across the following three challenge tracks:

- **Track 1: data provider challenges.** The data provider determines the challenge and provides certain data (i.e. data provider data) for the successful applicant to reuse as part of their solution to the specific problem raised. Furthermore, the successful applicant is able to include other datasets (i.e. SME Data) if required.
- **Track 2: sectoral challenges.** The Data Pitch consortium sets the challenge that requires the successful applicant to provide their own data (i.e. SME Self-Sourced Data) in order to solve the problem raised.

¹ The Data Pitch Sample Data Terms (draft version: 11 July 2018) (, p. 3) define the term “sample data” as: “[...] the data provided to Dawex by the Data Providers and subsequently delivered to SMEs via the Dawex platform for the purposes of SME Review.” These draft Sample Data Terms (, p. 3) also define the term “SME Review”: “the consideration by the SME of the Sample Data in order for the SME to decide whether, and how, to respond to a competitive call as part of Data Pitch Project.”

- **Track 3: open innovation challenge.** Applicants to the programme are able to propose an innovative solution that (re)uses data that are self-sourced (i.e. SME Self-Sourced Data).

1.2 Report overview

The Data Legality Report v2 report is split into three parts. Section 2 provides an overview of the three key contractual templates that govern the sharing and re-usage of Data Provider Data and SME (Self-Sourced) Data as part of the Data Pitch programme by:

- A. Reporting on the status of the two key contractual templates utilised during the first call of the Data Pitch programme - (i) Data Provider (Data Sharing) Agreement and (ii) SME Contract.
- B. Introducing a new key contractual template to be utilised as part of call 2 - (iii) SME Self-Sourced Data Sharing Agreement.

Section 3 then focuses on the draft Sample Data Terms that an SME would have to comply with in order to re-use Sample Data for the purposes of review. Section 4 then summarises the key changes made to the Data Pitch contractual portfolio.

2. Key Contractual Templates

2.1 Brief overview

This section provides an overview of the three key contractual templates to be used as part of the second call of the Data Pitch programme (2018-2019): (i) Data Provider (Data Sharing) Agreement; (ii) SME Contract; and (iii) SME Self-Sourced Data Contract draft template. The following table provides an overview of these contractual templates (to be) used in the course of the Data Pitch programme:

Overview table of the three key contractual templates (to be) used during the course of the Data Pitch programme					
	Name	Current status	Used for challenge track(s)	Current version	Brief description
1	Data Provider (Data Sharing) Agreement*	Active: Calls 1 and 2	Data provider challenges	Final: 12 April 2017	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.
2	SME Contract	Active: Calls 1 and 2	Data provider challenges	Final: 29 June 2017	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.
3	SME Self-Sourced Data Contract	Draft (in the process of review): Call 2	Sectoral challenges and the open innovation challenge	Draft v2: 21 June 2018 (Plus Annexure 7 Draft v4: 12 July 2018)	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.

**Note that it was necessary for one of the data providers (to the second call of the Data Pitch programme 2018-2019) to deviate from this key contractual template owing to special circumstances. Refer to section 2.2.3 of this report for further information.*

2.2 Data Provider (Data Sharing) Agreement (final version: 12 April 2017)

2.2.1 Brief description

The main purpose of the Data Provider (Data Sharing) Agreement is to define the terms and conditions under which the Data Providers provide their data to be used by successful SMEs for the duration of the Data Pitch programme. The Data Provider (Data Sharing) Agreement is to be executed between SOTON and each Data Provider on an individual basis in order to simplify contractual efficacy. This contractual template was finalised on 12 April 2017 – and used as part of the first call of the Data Pitch programme. For more information about the key considerations and

processes that led to the creation of this contractual template refer to Data Legality Report v1 – in particular see: Section 3 and Annex II.

2.2.2 Current status

Since no updates to Data Provider (Data Sharing) Agreement (version: 12 April 2017) are required, this template has been used during the second call of the Data Pitch programme (2018-2019).

2.2.3 Deviation from the Data Provider (Data Sharing) Agreement

Seven out of the eight data providers (to the second call of the Data Pitch programme 2018-2019) signed the Data Provider (Data Sharing) Agreement. However, it is necessary for the remaining data provider to deviate from the key contractual templates owing to special circumstances.

In this case, the Data Provider is unable to sign the Data Provider (Data Sharing) Agreement because they cannot give warranties for the data to be shared with the successful SME. These warranties cannot be given by the Data Provider because these data are collected from citizen volunteers through an open access licence and therefore:

- i. The Data Provider does not own these data.
- ii. The Data Provider is not in control of the data obtained.

The solution is to create a Data Tripartite Agreement that will be signed by all parties involved: the Data Provider, SOTON and the successful SME. However, a bespoke Data Provider (Data Sharing) Agreement is also required in order to commit the Data Provider to enter the Data Tripartite Agreement when a successful SME is selected.

In summary, the following three contractual templates are required:

- A. **Bespoke Data Provider (Data sharing) Agreement.** The Data Provider and SOTON sign a bespoke Data Provider (Data sharing) Agreement. This commits the Data Provider to enter the Data Tripartite Agreement when a successful SME is selected.
- B. **SME Contract (version: 28 June 2017).** The successful SME and SOTON sign an SME Contract, which triggers the event in the Bespoke Data Provider (Data Sharing) Agreement that: all parties – the Data Provider, SOTON and the successful SME – will enter into the Data Tripartite Agreement within 5 working days.
- C. **A Data Tripartite Agreement.** All parties sign the Data Tripartite Agreement.

2.3 SME Contract (final version: 29 June 2017)

2.3.1 Brief description

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 second round of the Project as part of the data provider challenges, which must take place prior to the start of each accelerator (i.e. February 2018 for cohort 1 and April 2019 for cohort 2).²

The SME Contract template was finalised on 29 June 2017 – and used as part of the first call of the Data Pitch programme. For more information about the key considerations and processes that led to the creation of this contractual template refer to Data Legality Report v1 – in particular see: Section 2 and Annex I.

² Given that the potential addition to the key contractual templates for call 2 – draft SME Self-Sourced Data Contract template – would be used for sectoral challenges and the open innovation challenge, the SME Contract would only be used for successful applicants to the data provider challenges track. Refer to section 2.4 of this report for more information about the draft SME Self-Sourced Data Contract template.

2.3.2 Current status

No updates are required to the SME Contract template (final version: 29 June 2017). However, the SME Contract would be used only for the data provider challenges during the second call of the Data Pitch programme (2018-2019) owing to a potential addition to the Data Pitch contractual template portfolio: the draft SME Self-Sourced Data Contract (see section 2.4 below for further information).

2.4 SME Self-Sourced Data Contract (draft version: 12 July 2018)

2.4.1 Brief description

The SME Self-Sourced Data Contract would be a legal agreement between the SMEs taking part in the Project and SOTON. The purpose of this agreement would be to set the terms of this arrangement as pre-conditions for taking part in the Project, under which each SME would receive investment in the form of a grant and supporting business services to help it innovate. The SME Self-Sourced Data Contract is a potential addition to the key contractual templates to be used as part of call 2 of the Project.

This agreement would be signed between SOTON and each successful SME selected to participate in the second round of the Project, as part of the sectoral challenges and open innovation challenge tracks for which there is no data provider. This signing would have to take place prior to the start of the second accelerator (April 2019).

2.4.2 Current status

At the time of writing this report (21 August 2018), a draft version of the SME Self-Sourced Data Contract template - Data Pitch Contract for SMEs Self-Sourced Data (v2: 21 June 2018) and Annexure 7 (v3: 27 June 2018 (with modifications made on 12 July 2018)) - is undergoing internal review.

2.4.3 Comparison with the SME Contract template

The SME Self-Sourced Data Contract (draft version: 12 July 2018) is a variation of the SME Contract (final version: 29 June 2017). Note that 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. See section 2.1 of the Data Legality Report v1 for further information.

The following table provides a comparative overview of fourteen main differences between the SME Contract template and the SME Self-Sourced Data draft template:

Comparative table that provides an overview of the fourteen main differences between the SME Contract template and the SME Self-Sourced Data Contract draft template		
<i>There are two main differences between the main text of the SME Contract template and the SME Self-Sourced Data Contract draft template:</i>		
	Type of variation	Brief description
1	Alteration to “1. General Provisions”	Clause 1.5 differs between the SME Contract and the SME Self-Sourced Data Contract draft template in order to reflect the types of data to be shared and/or

		re-used for innovation purposes by SMEs. Clause 1.5 of the SME Contract covers both Data Provider Data and SME Data - it states: “ 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. ” Whereas, Clause 1.5 of the SME Self-Sourced Data Contract draft template only covers SME (Self-Sourced) Data - it states: “ Annex 7 of this Contract sets out how the Company shall use the SME Self-Sourced Data for the purposes of the Project. ”
2	Removal of sub-licence clause under “9. Intellectual Property Rights”	Pursuant to Clause 9.8 of the Data Pitch Co-ordinator is able to sub-licence the Results for a period of (1) year after the end of the Project to a Data Provider (subject to certain conditions ³). This clause is not relevant for the sectoral challenges and open innovation challenge tracks (as no (Data Provider) Data will be re-used by the SMEs) – therefore it does not feature in the SME Self-Sourced Data Contract draft template.
<p><i>Moreover, there are twelve main differences between Annexure 7: SME Contract and Annexure 7: SME Self-Sourced Data Contract - v3: 27 June 2018 (with modifications made on 12 July 2018):</i></p>		
3	Removal of information about “(Data Provider) Data” and “Medium of Transfer”	The information section about (Data Provider) Data and its medium of transfer is not relevant to the sectoral challenges and open innovation challenge tracks, and therefore has been removed from Annexure 7: SME Self-Sourced Data Contract draft template.
4	Changes to the background information	Again, references to Data Providers and (Data Provider) Data are not relevant to to the sectoral challenges and open innovation challenge tracks, and therefore have been removed from Annexure 7: SME Self-Sourced Data Contract draft template.
5	Alteration to “1. Definitions”	The term “(Data Provider) Data” is removed from the Data Pitch Contract for SMEs Self-Sourced Data draft template, because no (Data Provider) Data are shared. Furthermore, Annexure 7 of the SME Contract refers to “SME Data” whereas Annexure 7 of the SME Self-Sourced Data Contract refers to “SME Self-Sourced Data”.

³ Clause 9.8 of the SME Contract states: “*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.*”

6	Addition of “Services”	The term “Services” ⁴ is introduced to the definitions section of Annexure 7 of the SME Self-Sourced Data Contract draft template. This is because “Services” are referred to under clause 2.1, which sets out the consideration between the parties. The scope of this consideration clause has been altered to reflect that no (Data Provider) Data are provided and therefore re-used as part of the sectoral challenges and open innovation challenge tracks.
7	Removal of “3. Licence”	The “Licence” section has been removed from Annexure 7 of the SME Self-Sourced Data Contract draft template, because it covers the licensing of (Data Provider) Data. Therefore, this section is not relevant to the sectoral challenges and open innovation challenge tracks.
8	Modifications to “Intellectual Property Rights”	Under section 3 of Annexure 7 of the SME Self-Sourced Data Contract draft template, (unlike the SME Contract) there is no obligation for the SME to grant 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. This is because the SME signing the SME Self-Sourced Data Contract will not have access to (Data Provider) Data.
9	Modifications to “SME obligations”	References to (Data Provider) Data are removed from Annexure 7 of the SME Self-Sourced Data Contract draft template. This section (4) now covers SME Self-Sourced Data.
10	Modifications to “University obligations”	References to (Data Provider) Data (e.g. file delivery method) are removed from Section 5 - University obligations under Annexure 7 of the SME Self-Sourced Data Contract draft template.
11	Removal of clause from “Data Protection” section	References to (Data Provider) Data are removed (i.e. Clause 7.3 of Annexure 7 of the SME Contract does not feature in Annexure 7 of the SME Self-Sourced Data Contract draft template).
12	Removal of clause from “Warranties” section	References to (Data Provider) Data are removed (i.e. Clause 10.2 of Annexure 7 of the SME Contract does not feature in Annexure 7 of the SME Self-Sourced Data Contract draft template).
13	Removal of clause from “Counterparts” section	Clause 19.2 of Annexure 7 of the SME Contract does not feature in Annexure 7 of the SME Self-Sourced Data Contract draft template.

⁴ The term “Services” is defined by Annexure 7: SME Self-Sourced Data Sharing Agreement (p. 5) as: “[...] the services provided to the SME under the Data Pitch Project as part of the accelerator.”

<p>14</p>	<p>Modifications to clause from “Liability” section</p>	<p>References to Clause 10.2 of Annexure 7 of the SME Contract (Warranties) has been removed from Clause 20.2 of Annexure 7 of the SME Self-Sourced Data Contract, because Clause 10.2 does not feature within this draft template (refer to row 12 of this table).</p>
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3. Sample Data Terms (draft version: 11 July 2018)

3.1 Brief overview

This section provides an overview on the Sample Data Terms (draft version: 11 July 2018 - the full draft text is located in Annex III) that an SME would have to comply with in order to access, view and/or download Sample Data for the purposes of review during the second open call of the Data Pitch programme. Note that at the time of writing (21 August 2018), the draft version of the Sample Data Terms is undergoing internal review.

3.2 The motivation to provide Sample Data

As part of the second call of the Project (July-October 2018), the Data Pitch consortium would like to provide sample data to SMEs (who are considering applying to a data provider challenge) for review purposes. The motivation for the provision of these sample data is so that an SME can: (i) better-understand what data are being provided as part of a specific data provider challenge; and (ii) use this information to better inform their decision on how to respond to the challenge under consideration.

It is important to note that SMEs would not be required to examine this Sample Data as part of their application process, nor would data providers be obligated to provide Sample Data for the purposes of SME review. At the time of writing this report (21 August 2018), Data Pitch has not yet received any Sample Data.

3.3 The need for Sample Data Terms

It is crucial that the SMEs have a clear understanding of their rights and obligations when accessing, visualising and/or downloading any Sample Data from the Dawex platform (see section 3.4 for further information). The main purpose of the draft Sample Data Terms therefore is to define how these data are to be utilised by SMEs. For instance, the Sample Data Terms set out: (i) the file delivery method; (ii) the expiration date (i.e. Sample Data can no longer be used after 2 October 2018 when the second call of the Data Pitch programme closes); (iii) intellectual property and data protection considerations; (iv) SME obligations; and (v) warranties. As aforementioned, the full text of the draft Sample Data Terms is located in Annex III.

3.4 Practicalities

The Sample Data would be made available to SMEs via the Dawex platform: <https://www.dawex.com/en/>.⁵ In order to access a sample dataset, an SME would have to register on the Dawex website. This registration information would then be vetted by members of the Dawex team. If this vetting process is successful, the SME would be able to access a specific sample data page on the Dawex platform (i.e. the “offering” page). The links to each data sample page would be made accessible on the Dawex platform via the Data Pitch Project - Datasets Catalogue available at <https://www.dawex.com/en/lp/datapitch-datasets/2018/> [last accessed 10 July 2018].

The Sample Data Terms would appear (on the “offering” page of the Dawex platform) before the (prospective) applicant downloads the data sample. The sample data would be provided to a (prospective) applicant as either:

1. A random sample generated by Dawex⁶ in the form of CSV or XLS files that the

⁵ Note that Dawex is one of the four Data Pitch consortium partners.

⁶ This random sample is generated, because the Data Provider uploads its dataset or subset of its data to the Dawex platform; the Dawex platform is then able to generate a random sample.

- (prospective) applicant will be able to visualise⁷ and/or download; or,
2. A sample of data configured by a Data Provider in an unspecified format that the SME will be able to download.⁸

(Prospective) applicants would be able to access, download and/or visualise these sample data until the second call of the Data Pitch programme closes on 2 October 2018. As part of accepting the Sample Data Terms, the (prospective) applicant would be granted a non-exclusive, non-transferable, revocable licence, to: (a) download, visualise and/or access the Sample Data; (b) store the Sample Data on its IT systems; and (c) process the Data for the SME Review of the Sample Data.

⁷ The (potential) applicants will be able to view the sample data using data visualisation tools - see <https://www.dawex.com/en/product/#evaluate> [last accessed 10 July 2018].

⁸ The Data Provider uploads a sub-sample of its data in format which the Dawex platform is unable to generate a sample.

4. Summary

4.1 Updates to the pre-existing contractual templates

Overall, no significant changes have been required to the two key contractual templates described by the last Data Legality Report (v1 - D3.3) that was delivered in August 2017: (1) Data Providers (Data Sharing) Agreement (final version: 12 April 2017) and (2) SME Contract (final version: 29 June 2017).

4.2 New additions

There two potential additions to the Data Pitch contractual portfolio since this last report: (i) the SME Self-Sourced Data Contract draft template (draft version: 12 July 2018); and (ii) the draft Sample Data Terms (draft version: 11 July 2018). These two draft templates are currently undergoing internal review (correct at the time of writing on 21 August 2018).

Annex I - SME Self-Sourced Data Contract (draft version: v2 - 21 June 2018)

Note that the following version of the SME Self-Sourced Data Contract is a draft, this template is undergoing internal review (correct at the time of writing 21 August 2018):

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 Company (“**SME Self-Sourced Data**”). The SME Self-Sourced 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 how the Company shall use the SME Self-Sourced Data 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** 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 Contracting Parties acknowledge that there may be IP Rights related to the SME Self-Sourced 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

10.1 “**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.

10.2 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.

10.3 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.

11. Information, and Dissemination

Information and communication with the EC and the Data Pitch Consortium

11.1 For the avoidance of doubt this Article has no impact on the Confidentiality provisions set out under Article 8 above.

11.2 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.

11.3 Any communication activities of the Company related to the Project must:

1. Display the EU emblem;
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.*”

11.4 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.

11.5 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:

- 11.5.1 the name of the Company;
- 11.5.2 contact address of the Company;
- 11.5.3 the general purpose of the Project;
- 11.5.4 the amount of the financial contribution of Data Pitch foreseen for the Project;
- 11.5.5 the geographic location of the activities carried out;
- 11.5.6 the list of dissemination activities and/or of patent (applications) relating to the Project;
- 11.5.7 the publishable reports submitted to it, in accordance with **Annex 1** and the obligations under this Contract; and
- 11.5.8 any picture or any audiovisual or web material provided to Data Pitch during the Project.

11.6 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.

11.7 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

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

11.9 Any change of persons or contact details shall be notified immediately to the Data Pitch Co-ordinator as specified in this Contract.

12. Financial audits and controls

Company Obligations

12.1 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.

12.2 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.

12.3 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.

12.4 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

12.5 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.

12.6 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.

12.7 If the EC suspects that the Company committed fraud or other illegal acts, it will inform the European Anti-Fraud Office (“**OLAF**”).

13. Termination and Suspension

Termination

13.1 This Contract shall terminate on the completion of the Project and receipt of the final payment by the Company.

13.2 The Data Pitch Co-ordinator may terminate the Project:

13.2.1 if the EC terminates the Data Pitch Grant Funding Agreement; or

13.2.2 If the Company commits a material breach of the Contract as set out in Article 5.

13.3 The Company may terminate the Project if the Data Pitch Co-ordinator commits a material breach of the Contract.

13.4 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.

13.5 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

13.6 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

13.7 The Company agrees that costs incurred during the suspension of the Project are not Eligible Costs as defined in Article 6.

14. Language

14.1 This Contract is drawn up in English language, which shall govern all documents, notices, meetings and related processes.

15. Amendments

15.1 Amendments or changes to this Contract shall be in writing and signed by the duly authorised representatives of the Contracting Parties.

15.2 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.

16. Applicable law

16.1 This Contract shall be construed in accordance with and governed by the laws of England and Wales.

17. Settlement of disputes

17.1 The Contracting Parties shall endeavour to settle their disputes amicably.

17.2 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.

17.3 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>Signed at _____ on DD/MM/201Y</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> <p>Signed at _____ on DD/MM/201Y</p>
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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

Annex II - Annexure 7: SME Self-Sourced Data Contract (draft version: v4 - 12 July 2018)

Note that the following version of the Annexure 7: SME Self-Sourced Data Contract is a draft, this template is undergoing internal review (correct at the time of writing 21 August 2018):

Annexure 7: SME Self-Sourced 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 Southampt on</p> <p>Name: _____</p> <p>Signature: _____</p> <p>Date: _____</p>	<p>Signed on behalf of [add name of the SME]</p> <p>Name: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
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SME Self-Sourced Data	<p>Add description of the SME Self-Sourced 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 Self-Sourced Data including whether the SME Self-Sourced Data is or contains Open Data; · the rights that the SME has to use the SME Self-Sourced Data; · whether the SME Self-Sourced Data has been subject to any anonymisation procedures; or · whether the SME Self-Sourced Data has been subject to Pseudonymisation Procedures as defined.
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 SMEs to experiment with data as part of the Data Pitch Project.
- B. 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.
- C. The SME will supply the data to the Project the SME Self-Sourced Data as defined below.
- D. **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 SME Self-Sourced Data unless either is identified as Confidential

Information or has been subject to Pseudonymisation Procedures.

"Data Controller" means as defined in the General Data Protection Regulation.

"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).

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

"Data Processor" means as defined in the General Data Protection Regulation and the Data Protection Act 2018.

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

"DPA" means the UK Data Protection Act 2018.

"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.

"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 share alike.

"Personal Data" means as defined in the the General Data Protection Regulation.

"Privacy and Data Protection Requirements" means 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), the Data Protection Act 2018 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.

"Services" means the services provided to the SME under the Data Pitch Project as part of the accelerator.

"SME Self-Sourced 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.

"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.

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 Services from the University to the SME and the licence granted in Clause 3, the SME agrees to use the SME Self-Sourced 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. Intellectual Property

3.1 The University and the SME acknowledge that all Intellectual Property Rights in the SME Self-Sourced Data shall at all times remain the property of the SME or its licensors.

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

3.3 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.

4. SME Obligations

4.1 The SME shall:

- (a) provide the University with a description of each dataset that it plans to use as described on page 2 of this Agreement;
- (b) disclose to the University the anonymisation techniques and Pseudonymisation Procedures used by the SME 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; and

- (c) not do anything that may damage the reputation of the University.

4.2 The SME shall 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 SME Self-Sourced Data and against accident, alteration, actual loss or destruction of, or damage to, the SME Self-Sourced Data, having regard to the state of technological development.

4.3 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 SME Self-Sourced Data, it shall immediately notify the University.

4.4 The SME shall notify the University promptly if any SME Self-Sourced Data is or is suspected to have been lost or destroyed or become damaged, corrupted or unusable and shall restore such SME Self-Sourced Data at its own expense.

5. University Obligations

5.1 Where the SME uses SME Self-Sourced Data only under the Project, such use will only be refused where privacy or data protection risks could reasonably be deemed to arise from combining discrete datasets in the SME Self-Sourced Data alone, under the Project.

6. Data Protection

6.1 Subject to Clause 6.2, the Parties agree that the SME Self-Sourced 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.

6.2 To the extent that the Parties exchange any SME Self-Sourced Data related to natural persons that may be singled out from such SME Self-Sourced Data from which such persons become attributable and therefore the SME Self-Sourced 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.

6.3 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.

7. Audit

7.1 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 SME Self-Sourced Data and in relation to any due diligence activities that the University may reasonably undertake on the SME Self-Sourced 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.

8. Confidentiality and Publication

8.1 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.

8.2 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.

8.3 The obligations of confidentiality in this Clause 8 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.

8.4 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.

8.5 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.

- 8.6 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. Warranties

9.1 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.

9.2 The SME warrants that it has the right to use the SME Self-Sourced Data for the Project and to license the use of the Results, including any Results arising from the use of SME Self-Sourced Data, and that the SME Self-Sourced Data:

- (a) does not infringe the Intellectual Property Rights of any third party;
- (b) does not contain Personal Data, including because the SME Self-Sourced Data was subject to adequate anonymisation techniques, pursuant to the obligations set out in Clause 6; 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.

9.3 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 Project is expected to commence, will cover the processing of the SME Self-Sourced Data 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].

9.4 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 SME Self-Sourced Data pursuant to this Agreement, The details are as follows:

University of Southampton: Registration number Z6801020.

9.5 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.

9.6 Without limiting the effect of clause 9.2, neither Party warrants that the SME Self-Sourced Data or the Results are accurate, complete, reliable, useful, fit for purpose or timely.

10. Term and Termination

10.1 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.

- 10.2 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.
- 10.3 Without prejudice to clauses 10.1 and 10.2, 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 European Commission terminates Data Pitch.
- 10.4 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 in accordance with clause 8.4 promptly return any Confidential Information to the University.

11. Entire Agreement

- 11.1 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.
- 11.2 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 any rights related to the SME Self-Sourced Data.

12. Assignment and Sub-licensing

- 12.1 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.

13. Waiver

- 13.1 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.

- 13.2 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.

14. Variation

- 14.1 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).

15. Invalidity

- 15.1 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.

16. Exclusion of Third Party Rights

- 16.1 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.

17. Governing Law and Jurisdiction

- 17.1 This Agreement shall be governed by and construed in accordance with English law including non-contractual claims and disputes.

- 17.2 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.

- 17.3 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.

18. Counterparts

- 18.1 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. Liability

- 19.1 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 19.2, the maximum liability for one Party to the other shall not exceed £10,000 (ten thousand pounds).

- 19.2 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 9.3.
- 19.3 Subject to clause 19.1 and 19.2, 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 III: Draft Sample Data Terms (draft version: 11 July 2018)

Note that the following version of the Sample Data Terms is a draft, this template is undergoing internal review (correct at the time of writing 21 August 2018):

Data Pitch Sample Data Terms

These Sample Data Terms were last updated 11 July 2018

By downloading, visualising and/or assessing the Sample Data, you confirm that you accept these terms of use with Southampton University (the “**Sample Data Terms**”) and that you agree to comply with them.

If you do not agree to these terms you must not download, visualise and/or access the Sample Data.

We recommend that you print a copy of these terms for future reference.

Background

- a. We, the University of Southampton (the “**University**”) are 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 you, (the “**SME**”) to experiment with that data as part of the Data Pitch Project.
- b. A Data Provider has licensed data to the University for the Data Pitch Project and has agreed to share a sample of that data (the “**Sample Data**”) with the SME so that the SME can better understand what is in the data and to inform its decision as to whether to respond to a competitive call as part of Data Pitch.

File Delivery Method	<p>After the SME has successfully registered on the Dawex platform, the Sample Data are provided to the SME as either:</p> <ul style="list-style-type: none"> (i) A random sample generated by Dawex in the form of CSV or XLS files that the SME will be able to visualise and/or download; or (ii) A sample of data configured by a Data Provider in an unspecified format that the SME will be able to download.
Expiry Date	2 October 2018

Definitions and interpretation

In these Sample Data Terms, unless the context otherwise requires, the following definitions shall apply:

“**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 Sample Data unless it is identified as Confidential Information or has been subject to Pseudonymisation Procedures.

"Data Controller" means as defined in the General Data Protection Regulation.

"Data Protection Authority" means the relevant data protection authority in the territories where the parties to these Sample Data Terms are established.

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

"Data Subject" means as defined in the General Data Protection Regulation.

"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.

"File Delivery Method" means the medium of transfer of the Sample Data as either: (i) a random sample generated by Dawex in the form of CSV or XLS files that the SME will be able to visualise and/or download; or (ii) a sample of data configured by a Data Provider in an unspecified format that the SME will be able to download.

"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 General Data Protection Regulation and the Data Protection Act 2018.

"Privacy and Data Protection Requirements" means the Electronic Communications Data Protection Directive (2002/58/EC), the General Data Protection Regulation ((EU) Regulation (2016/679), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), the Data Protection Act 2018 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.

"Sample Data" means the data provided to Dawex by the Data Providers and subsequently delivered to SMEs via the Dawex platform for the purposes of SME Review.

"Sample Data Terms" means these Sample Data Terms.

"SME Review" means the consideration by the SME of the Sample Data in order for the SME to decide whether, and how, to respond to a competitive call as part of Data Pitch

Project.

2. **Consideration**

In consideration of the supply of the Sample Data from the University to the SME and the licence granted in Clause 3, the SME agrees to use the Sample Data for the SME Review only and in accordance with these Sample Data Terms.

3. **Licence**

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

- (a) Download, visualise and/or access the Sample Data;
- (b) store the Sample Data on its IT systems; and
- (c) process the Data.

for the SME Review of the Sample Data.

3.2 Except as expressly provided in these Sample Data Terms the SME shall not:

- (a) use the Sample Data for any purpose whatsoever other than for the SME Review;
- (b) use the Sample Data (wholly or in part) in its products or services; or
- (c) redistribute the Sample Data (wholly or in part) to any third parties.

4. **Intellectual Property**

The University and the SME acknowledge that no licence or any proprietary right shall be granted to the SME other than as expressly set out in these Sample Data Terms for the SME Review.

5. **SME Obligations**

5.1 The SME shall:

- (a) only make such copies of the Sample Data as are strictly required in relation to the SME Review;
- (b) not extract, re-utilise, use, exploit, redistribute, copy or store the Sample Data other than for the SME Review or as expressly permitted by these Sample Data Terms;
- (c) in the event that the Sample 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) Sample Data Terms 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 Sample Data and against accident, alteration, actual loss or destruction of, or damage to, the Sample Data, having regard to the state of technological development.

5.3 If the SME breaches its obligations under these Sample Data Terms or is investigated by any relevant regulator or it receives any request, claim, complaint, notice or communication in relation to the use of the Sample 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 Sample Data is processed.

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

6. **University Obligations**

6.1 The University shall provide the Sample Data to the SME in accordance with the File Delivery Method.

7. **Data Protection**

7.1 Subject to Clause 7.2, the Parties agree that the Sample 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 Sample Data related to natural persons that may be singled out from such Sample Data from which such persons become attributable and therefore the Sample 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.

7.3 For the avoidance of doubt, to the extent that the Sample 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 these Sample Data Terms 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. **Confidentiality**

8.1 The SME 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.

8.2 The SME 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 these Sample Data Terms.

8.3 The obligations of confidentiality in this Clause 8 shall continue for a period of five (5) years after the termination or expiry of these Sample Data Terms 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.

8.4 All Confidential Information of the University and copies of it shall be returned to the University within fourteen (14) days of receipt of a request from the University.

8.5 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.

8.6 Nothing in these Sample Data Terms 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. Warranties

9.1 The SME represents and warrants that it 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 these Sample Data Terms that cannot be remedied and shall entitle the University to terminate these Sample Data Terms with immediate effect.

9.2 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.

9.3 The University does not warrant that the Sample Data is accurate, complete, reliable, useful, fit for purpose or timely.

10. Term and Termination

10.1 These Sample Data Terms shall commence on the date the Sample Data is downloaded, visualised and/or accessed by the SME.

10.2 The University may by notice in writing (including by email) immediately terminate these Sample Data Terms.

10.3 On termination or expiry of these Sample Data Terms and unless otherwise expressly stated, all rights of the SME shall immediately cease to have effect and the SME shall immediately cease all use of the Sample Data and in accordance with clause 8.4 promptly return the Sample Data and Confidential Information to the University and delete all copies of the Sample Data from its systems.

11. **Entire Agreement**

11.1 These Sample Data Terms set out the entire agreement and understanding between the Parties in respect of the provision and use of the Sample Data.

12. **Waiver**

12.1 Any failure or delay by the University to enforce or to exercise, at any time or for any period of time, any term or any right arising pursuant to these Sample Data Terms does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect the University's right to enforce and exercise it.

13. **Invalidity**

13.1 To the extent that any provision of these Sample Data Terms 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 these Sample Data Terms, it shall not affect the enforceability of the remainder of these Sample Data Terms nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

14. **Exclusion of Third Party Rights**

14.1 No term of these Sample Data Terms is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it.

15. **Governing Law and Jurisdiction**

15.1 These Sample Data Terms shall be governed by and construed in accordance with English law including non-contractual claims and disputes.

16. **Liability**

16.1 Except for that which cannot be limited by law, including death or personal injury as a result of the University's negligence the maximum liability for the University to the SME shall not exceed £5,000 (five thousand pounds).

16.2 Subject to clause 16.1 the University shall not 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 these Sample Data Terms, 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.

By downloading the Sample Data, you signify that you have read and agreed to these terms and conditions.