



INNOVATION PROGRAMME Data Pitch H2020 - 732506

## Data Pitch Contract

Between

The University of Southampton

And

***[insert company name]***

## Table of Contents

Contracting parties .....	3
1. General provisions.....	3
2. Entry into force of the contract and termination.....	3
3. Performance obligations and responsibilities of the Company.....	3
4. Conflict of Interests.....	4
5. Breach of contractual obligations .....	4
6. Funding and financial provisions .....	5
7. Liability of the Company .....	6
8. Confidentiality .....	6
9. Intellectual property rights .....	6
10. Force majeure .....	7
11. Information, and Dissemination.....	7
12. Financial audits and controls .....	8
13. Termination and Suspension.....	9
14. Language.....	9
15. Amendments .....	9
16. Applicable law.....	9
17. Settlement of disputes .....	9
Annex 1 Project description.....	11
Annex 2 Guide for applicants .....	11
Annex 3: Bank account information form.....	11
Annex 4: Declaration of honour .....	11
Annex 5: Administrative data form.....	11
Annex 6: SME validation information.....	11
Annex 7: Data Sharing Agreement.....	12

## Contracting parties

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

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

## 1. General provisions

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

## 2. Entry into force of the contract and termination

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

## 3. Performance obligations and responsibilities of the Company

- 3.1. The Company undertakes to take part in the efficient implementation of the Project and to cooperate and perform and fulfil promptly and on time, all of its obligations set out in this Contract and in particular **Annex 1**, **Annex 2** and **Annex 7** for use of the Data as may reasonably be required and with a duty of good faith and compliance with the Ethics Statement accompanying the call documents.

- 3.2. The Company will comply with the obligations as set out in this Contract and **Annexes 1, 2 and 7**, in particular:
- 3.2.1. The Company will use the allocated funding for the sole purpose of carrying out the Project and in accordance with the requirements of Article 6.
  - 3.2.2. The Company shall immediately inform the Data Pitch Co-ordinator of any changes in status or circumstances that may lead to a delay in or inability to perform its obligations under the Contract.
  - 3.2.3. The Company shall not assign its rights, duties or obligations under this Contract to any person or entity, in whole or in part and any attempt to do so shall be deemed a breach of this Contract.
  - 3.2.4. The Company shall comply with the terms of the Data Sharing Agreement set out in **Annex 7**.
  - 3.2.5. The Company shall keep all records relating to the Project including financial records for Eligible Costs as set out in Article 6 for a period of seven (7) years from the termination or expiry of this Contract.
  - 3.2.6. The Company shall comply with all relevant laws including but not limited to anti-corruption and anti-bribery, data protection (including the provisions set out in **Annex 7**), equality and ethics including compliance with the Ethics Statement accompanying the call documents.
- 3.3. The Company shall also comply with the following specific obligations in relation to Data Pitch:
- 3.3.1. Populate and maintain a contact sheet with key contact details of staff;
  - 3.3.2. Provide bio and photo for each key member of your team to the Data Pitch communication team, this will be placed on the Data Pitch website;
  - 3.3.3. Update any team changes and communications data to the Data Pitch Co-ordinator as soon as reasonably practicable and in any event, no later than seven days following the relevant change;
  - 3.3.4. Provide biweekly (every two weeks) financial updates using a form provided by the Data Pitch Co-ordinator including, but not limited to the value of new business secured, grants secured, revenue recognised and the current cash position;
  - 3.3.5. Provide biweekly (every two weeks) updates of the work funded by the Data Pitch Project, using a form provided by Data Pitch, including, but not limited to the progress towards the achievement of milestones and deliverables, and events attended;
  - 3.3.6. Write a blog post after each successful milestone, which will be published on Data Pitch's website;
  - 3.3.7. Work to promote the Data Pitch Project and its mission;
  - 3.3.8. Use the Data Pitch brand appropriately in its communications; and
  - 3.3.9. Do nothing that may have an adverse effect on the reputation of the Data Pitch Project or Data Pitch Consortium members.

#### 4. Conflict of Interests

- 4.1. The Contracting Parties agree to take all measures to prevent any situation where the impartial and objective implementation of the Project is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ("**Conflict of Interest**").
- 4.2. Each Contracting Party must formally notify the other Contracting Party without delay of any situation constituting or likely to lead to a Conflict of Interest and immediately take all the necessary steps to rectify this situation.
- 4.3. The Data Pitch Co-ordinator will notify the EC without delay of a Conflict of Interest of either the Company of the Data Pitch Co-ordinator.
- 4.4. The Contracting Parties agree to take any reasonable measures notified to the Data Pitch Co-ordinator by the EC to rectify a Conflict of Interest.

#### 5. Breach of contractual obligations

- 5.1. In the event of a breach the Data Pitch Co-ordinator will give written notice requiring that, where possible, such a breach is to be remedied within thirty (30) days. In case the Company has not remedied the breach within the notice period, or a remedy is not possible, the Data Pitch Co-ordinator may decide to terminate the contract unilaterally and to take measures to secure from the Company the repayment of the payments already received.
- 5.2. For the avoidance of doubt the following sets out a non-exhaustive list of events that will constitute a breach:
  - 5.2.1. The Data Pitch Co-ordinator identifies that the Company has breached its obligations under the Contract;

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

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

## 6. Funding and financial provisions

### Maximum financial contribution

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

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

### Distribution of the financial contribution

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

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

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

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

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

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

(a) Costs of subcontracting and

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

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

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

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

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

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

6.6.2. The payment will be made for the Eligible Costs only as stated in Article 6.3.

6.6.3. The Data Pitch Co-ordinator reserves the right to withhold the payments if the Company does not comply with the obligations and responsibilities specified in this Contract and in **Annexes 2 and 7**.

6.7. Payments will be transferred in stages with an initial payment an interim payment and a final payment all as set out in **Annex 1**.

6.7.1. The initial payment of 30% of the total financial grant will be released no later than fifteen (15) calendar days after the Contract has been agreed and signed by the Company and by the Data Pitch Co-ordinator.

6.7.2. The interim payment of 30% of the total financial grant will be paid after four (4) months of the Project and after the successful completion of the first 2 Milestones of the Project.

6.7.3. The final payment of 40% of the total financial grant will be transferred within fifteen (15) calendar days of the completion of the Project and the receipt and approval of the final project report by the Data Pitch Project Management Board.

6.8. Banking and transaction costs relating to the bank transfers will be paid by the Company.

## 7. Liability of the Company

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

## 8. Confidentiality

### Principles

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

### Confidentiality obligations

- 8.2. The Contracting Parties agree that the information defined in Article 8.1 is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information, and the Contracting Parties undertake that they will not, during the Project and for a period of five (5) years from the expiration date of the Project, use any such information for any purpose other than in accordance with the Contract and the terms specified in **Annexes 2 and 7**.
- 8.3. The Contracting Parties undertake that they will, during the Project and for a period of five (5) years from the expiration date of the Project, treat the information as confidential, provided always that such agreement and undertaking shall not extend to any information which the receiving Party can show:
  - 8.3.1. was, at the time of disclosure to the Company, published or otherwise generally available to the public; or
  - 8.3.2. has, after disclosure to either of the Contracting Parties, been published and become generally available to the public otherwise than through any act omission on the part of the receiving Party; or
  - 8.3.3. was already in the possession of a Contracting Party, without any restrictions on disclosure, at the time of disclosure to the receiving Party; or
  - 8.3.4. was rightfully acquired from others without any undertaking of confidentiality; or
  - 8.3.5. is or was independently developed by a Contracting Party without use of the information provided by the disclosing Party; or
  - 8.3.6. was required to be disclosed in order to comply with applicable laws or regulations or with a Court or administrative order.
- 8.4. In case of breach of the confidential rules in this Contract, the Contracting Party breaching the confidentiality obligations will remain solely liable for possible claims.
- 8.5. The Contracting Parties agree that confidential information that is disclosed to the EC by the Data Pitch Co-ordinator may be disclosed to:
  - 8.5.1. the EC's staff, other EU Institutions and bodies; or
  - 8.5.2. third parties as necessary to implement the Data Pitch Project or safeguard the EC's financial interests,  
all subject to those parties being bound by obligations of confidentiality.
- 8.6. Breach of the provisions of this Article 8 may result in termination of this Contract by either Contracting Party.

## 9. Intellectual property rights

- 9.1. "**Background IP**" means all IP Rights owned by or licensed to the Company and all IP Rights owned by or licensed to the Data Pitch Co-ordinator at the time of the Contract.

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

## 10. Force majeure

- 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:
- 11.3.1. Display the EU emblem;
  - 11.3.2. Include the text: *“This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 732506.”*
- 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 <b>(insert Company name &amp; Director's name/surname)</b></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>
--	---

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

enterprise is engaged in an economic activity). Sworn or solemn statements before a judicial or administrative authority, notary or public officer are **not** acceptable proof of your SME status.

### **Annex 7: Data Sharing Agreement**

This Agreement will be consistent with the agreement between the Data Pitch Co-ordinator and the Data Pitch Data Provider for the use of Data by the Company within the Project.



INNOVATION PROGRAMME Data Pitch H2020 - 732506

## Annexure 7: Data Sharing Agreement

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

### BETWEEN

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

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

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

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

<b>Signed</b> on behalf of University of Southampton	<b>Signed</b> on behalf of [add name of company]
Name: _____	Name: _____
Signature: _____	Signature: _____
Date: _____	Date: _____



INNOVATION PROGRAMME Data Pitch H2020 - 732506

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

## Background:

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

It is agreed as follows:

### 1. Definitions and interpretation

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

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

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

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

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

“**Data**” means as described on page 2 of this Agreement.

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

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

“**Data Provider**” means the organisation which has licenced the Data to the University for the purpose of the Data Pitch.

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

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

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

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

**"General Data Protection Regulation"** means the EU General Data Protection Regulation ((EU) Regulation (2016/679) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

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

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

**"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 Data Protection Directive before 25 May 2018; and the General Data Protection Regulation from 25 May 2018 onwards.

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

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

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

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

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

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



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

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
  - (b) a reference to:
    - (i) any Party includes its successors in title and permitted assigns;
    - (ii) a "**person**" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);
    - (iii) clauses are to clauses of this Agreement; and
  - (c) the headings are for convenience only and shall not affect the interpretation of this Agreement.

## 2. **Consideration**

- 2.1 In consideration of the supply of Data from the University to the SME and the licences granted in Clause 3 and 4, the SME agrees to use the Data for the SME Permitted Use only and in accordance with this Agreement.
- 2.2 The Parties shall each be responsible for their own costs incurred in negotiating and performing their respective obligations under this Agreement.

## 3. **Licence**

- 3.1 Subject to Clause 3.2, the University grants to the SME a non-exclusive, non-transferable, revocable licence, to:
- (a) access, view and combine or aggregate the Data with other data, including the SME Data, or information or adapt the Data;
  - (b) store the Data on its IT systems; and
  - (c) process the Data.
- for the SME Permitted Use during the Term.
- 3.2 Except as expressly provided in this Agreement, the SME shall not:
- (a) use the Data for any purpose whatsoever other than the SME Permitted Use;
  - (b) use the Data (wholly or in part) in its products or services; or
  - (c) redistribute the Data (wholly or in part) to any third parties.

## 4. **Intellectual Property**

- 4.1 The University and the SME acknowledge that:
- (a) all Intellectual Property Rights in the Data shall at all times remain the property of University or its licensors;
  - (b) all Intellectual Property Rights in the SME Data shall at all times remain the property of the SME or its licensors;
  - (c) no licence or any proprietary right shall be granted to the SME other than as expressly set out in this Agreement for the SME Permitted Use; and
  - (d) The University or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the Data.
- 4.2 Any Intellectual Property Rights in the Results generated through the use of the Data, or the

SME Data if applicable, for the SME Permitted Use shall be owned by the SME.

- 4.3 The SME grants to the University a non-exclusive, non-transferable licence to the Results generated by the SME in the Project arising from the use of the Data, such licence to be sub-licensable to the Data Provider:
- (a) for a period of one (1) year after the end of Data Pitch.
  - (b) for the purpose of internal use, which may be commercial use; and
  - (c) for the avoidance of doubt, where the Results are software, the sub-licence granted allows for the use of the software by the Data Provider, but does not permit the commercial re-sale of that software by the Data Provider.
- 4.4 Neither Party shall use the other Party's name or logo in any press release, or for any other promotional purpose, without first obtaining the other Party's written consent.

## 5. **SME Obligations**

- 5.1 The SME shall:
- (a) only make such copies of the Data as are strictly required in relation to the SME Permitted Use;
  - (b) not extract, re-utilise, use, exploit, redistribute, copy or store the Data other than for the SME Permitted Use or as expressly permitted by this Agreement;
  - (c) in the event that the Data contains data that has been made subject to anonymisation techniques or Pseudonymisation Procedures, not attempt to reverse engineer, decrypt, de-anonymise, derive or otherwise re-identify such data;
  - (d) In the event that the SME wishes to use SME data, it should notify the University by providing a description of each such dataset that it plans to use as described on page 2 of this Agreement; and
  - (e) not do anything that may damage the reputation of the University.
- 5.2 The SME shall establish and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk to prevent the unauthorised or unlawful use or processing of the Data and against accident, alteration, actual loss or destruction of, or damage to, the Data, having regard to the state of technological development.
- 5.3 If the SME breaches its obligations under this Agreement or is investigated by any relevant regulator or it receives any request, claim, complaint, notice or communication in relation to the use of the Data, it shall immediately notify the University and shall co-operate fully with the University in relation to such matter and will enable the University or any relevant regulator to have prompt accompanied access during regular business hours to premises or operations where such Data is processed.
- 5.4 The SME shall notify the University promptly if any Data is or is suspected to have been lost or destroyed or become damaged, corrupted or unusable and shall restore such Data at its own expense.

## 6. **University Obligations**

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

6.4 In the event that the SME notifies the University that it wishes to use SME Data under the Project, such use will only be refused where privacy or data protection risks could reasonably be deemed to arise from combining such SME Data with the Data, or from combining discrete datasets in the SME Data alone, under the Project.

## 7. **Data Protection**

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

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

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

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

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

## 8. **Audit**

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

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

## 9. Confidentiality and Publication

- 9.1 Each Party shall treat the Confidential Information with the same degree of care and apply no lesser security measures than it affords to its own confidential information and shall use reasonable endeavours to ensure that these measures provide adequate protection against unauthorised disclosure, copying or use.
- 9.2 Both Parties shall use reasonable endeavours not to disclose the Confidential Information to any third party, save for those directors, officers or employees who need to know it strictly for the purpose of exercising or performing its rights and obligations under this Agreement.
- 9.3 The obligations of confidentiality in this Clause 9 shall continue for a period of five (5) years after the termination/expiry of this Agreement but shall not apply to information if:
- (a) it is required to be disclosed by law, court order or other authority of competent jurisdiction or any regulatory or government authority to which it is subject, but in each case only to the extent required and for the purpose of such disclosure;
  - (b) the information has entered the public domain through no fault of the other Party;
  - (c) the information is developed independently without recourse to the Confidential Information; or
  - (d) the other Party has given its consent in writing in advance.
- 9.4 All Confidential Information of the University and copies of it shall be returned to the University within thirty (30) days of receipt of a request from the University or on the Termination Date, whichever is the later. For the avoidance of doubt each Party shall retain the right to keep copies of Confidential Information on their back up system provided that it is not accessed.
- 9.5 The University may, by giving written notice to the SME, require that the SME (and any employee of the SME) delays the publication of any information or knowledge by ninety (90) days where, in its reasonable opinion, such delay is necessary for the University to seek protection of its (and its licensor's) Intellectual Property Rights or to prevent the publication of Confidential Information.
- 9.6 Nothing in this Agreement shall prevent the University from having recourse to a court of competent jurisdiction for the purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage in relation to its Intellectual Property Rights or Confidential Information.

## 10. Warranties

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

**and that the SME Data:**

- (a) does not infringe the Intellectual Property Rights of any third party;
- (b) does not contain Personal Data, including because the SME Data was subject to adequate anonymisation techniques, pursuant to the obligations set out in Clauses 6 and 7; or
- (c) contains Personal Data but that Personal Data has been subject to Pseudonymisation Procedures and any other relevant measures such that the risk of re-identification of individuals is minimised pursuant to the obligations set out in Clause 6 prior to its use by the SME.

10.4 The SME warrants that, in respect of personal data processing activities carried out in EU Member States where pre-registration of such activities is required, it has a valid registration with the relevant Data Protection Authority which, by the time that the Data sharing is expected to commence, will cover the processing of the Data and the SME Data (if applicable) pursuant to this Agreement in the relevant jurisdiction unless an exemption applies. The details are as follows:

- (a) [SME]: [Registration number [.....] OR explain exemption to registration].

10.5 The University warrants that it has a valid registration with its national Data Protection Authority which, by the time that the data sharing is expected to commence, covers any personal data processing activities of the Data pursuant to this Agreement, The details are as follows:

- (a) University of Southampton: Registration number Z6801020.

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

10.7 Without limiting the effect of clause 10.2, neither Party warrants that the Data, the SME Data or the Results are accurate, complete, reliable, useful, fit for purpose or timely.

**11. Term and Termination**

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

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

- (a) the other Party commits a material breach of this Agreement which in the case of a breach capable of remedy has not been remedied within thirty (30) days of the receipt of a notice identifying the breach and requiring its remedy;
- (b) the other Party passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the winding-up or dissolution;
- (c) any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to the other Party or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession or sells, any of the other Party's assets; or
- (d) the other Party is unable to pay its debts (within the meaning of Section 123, Insolvency Act 1986), ceases for any reason to carry on business or takes or suffers any similar action which in its opinion means that the other Party may be unable to pay its debts.

11.3 Without prejudice to clauses 11.1 and 11.2, the University may by notice in writing immediately terminate or suspend this Agreement if:

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

- (b) the Data Pitch Contract is terminated; or
  - (c) the Agreement between the University and the Data Provider is terminated; or
  - (d) the European Commission terminates Data Pitch; or
  - (e) the University is unable to licence or share the Data with the SME for any reason.
- 11.4 On termination or expiry of this Agreement and unless otherwise expressly stated, all rights and obligations of the University and SME shall immediately cease to have effect and the SME shall immediately cease all use of the Data and in accordance with clause 9.4 promptly return the Data and Confidential Information to the University and delete all copies of the Data from its systems.
- 12. Entire Agreement**
- 12.1 This Agreement and the Data Pitch Contract sets out the entire agreement and understanding between the Parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement.
- 12.2 In case of any conflict between this Agreement and the provisions of the Data Pitch Contract, the provisions of the Data Pitch Contract shall prevail save that this Agreement shall prevail for all matters relating to the terms under which the Data is shared and any rights related to the Data or the SME Data.
- 13. Assignment and Sub-licensing**
- 13.1 The SME shall not assign, transfer, charge or otherwise encumber, declare a trust over or deal in any other manner with this Agreement or any right, benefit or interest under it, or sub-license or sub-contract any of its obligations under it, without the prior written consent of the University.
- 14. Waiver**
- 14.1 Any failure or delay of either Party to enforce or to exercise, at any time or for any period of time, any term or any right arising pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect such Party's right to enforce and exercise it.
- 14.2 A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed by an authorised signatory of the Party who is waiving the breach or provision. Any waiver of a breach of the term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.
- 15. Variation**
- 15.1 Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 16. Invalidity**
- 16.1 To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 17. Exclusion of Third Party Rights**
- 17.1 No term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it.
- 18. Governing Law and Jurisdiction**
- 18.1 This Agreement shall be governed by and construed in accordance with English law including

non-contractual claims and disputes.

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

## 19. Counterparts

- 19.1 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until both Parties have executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.
- 19.2 Executed copies of the signature pages of this Agreement transmitted electronically in either Tagged Image Format Files (TIFF) or Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the Parties waive any rights they may have to object to such treatment, provided that this treatment shall be without prejudice to the obligation of the Parties to exchange original signatures as quickly as practicable after execution of this Agreement.

## 20. Liability

- 20.1 Except for that which cannot be limited by law, including death or personal injury as a result of a Party's negligence and save for claims under the indemnity in Clause 20.2, the maximum liability for one Party to the other shall not exceed £10,000 (ten thousand pounds).
- 20.2 The University shall indemnify the SME for any and all losses, expenses, costs, proceedings or claims suffered by the SME as a result of a breach of the warranties in Clause 10.2 and the SME shall indemnify the University for any and all losses, expenses, costs, proceedings or claims suffered by the University as a result of a breach of the warranties in Clause 10.3.
- 20.3 Subject to clause 20.1 and 20.2, neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any losses, expenses, costs, proceedings or claims arising in connection with the performance or contemplated performance of this Agreement or any collateral contracts, including but not limited to any:
- (a) loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill; or
  - (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
  - (c) loss or liability (whether direct or indirect) under or in relation to any other contract.

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