



Grant Agreement: 779790

D2.4 Sub-grant agreement template, iteration 1

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v01	26/03/08	First Version of deliverable contents prepared by ZABALA
v02	16/04/08	Comments provided by DEUSTO following review by legal services
v10	27/04/08	Final version ready after reviews from ESH and DEUSTO
V12	10/07/18	Data protection clause included as Article 7 and Confidentiality clause updated (Article 6), after review by Ethics Advisor. Prohibition to sub-contract added as Article 12.

Core Consortium:



Data providers:



SUB-GRANT AGREEMENT
EUROPEAN DATA INCUBATOR (EDI)



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Contracting parties

On the one part,

The **UNIVERSITY OF DEUSTO**, a private organization organized under the laws of Spain, established in Av. de las Universidades, 24, Bilbao – Spain, duly represented by [...], hereinafter referred as the “Contractor”. The University of Deusto acts on behalf of the EDI Consortium.

On the other part,

[if start-up: 2 to 4 entrepreneurs acting jointly]:

[NAME_SURNAME], a self-employee/natural person, with ID **[ID_NUMBER]** established in **[ADDRESS and COUNTRY]**,

[NAME_SURNAME], a self-employee/natural person, with ID **[ID_NUMBER]** established in **[ADDRESS and COUNTRY]**,

[NAME_SURNAME], a self-employee/natural person, with ID **[ID_NUMBER]** established in **[ADDRESS and COUNTRY]**, and

[NAME_SURNAME], a self-employee/natural person, with ID **[ID_NUMBER]** established in **[ADDRESS and COUNTRY]**,

hereinafter together referred as the “Beneficiaries”

- [if an SME]:

[Name of SME], with VAT number [...], organized under the laws of [...], established in **[address]**, duly represented by **[Name of legal representative and Position]**, hereinafter referred as the “Beneficiary”.

Hereinafter collectively referred as the “Contracting Parties”.

The Contracting Parties AGREE to the following terms and conditions including those in the following Annexes, which form an integral part of this Sub-grant Agreement (hereinafter referred as the “Contract”).

General Provisions

The European Commission (hereinafter referred as the “EC”) and the Contracting Party on behalf of the EDI Consortium have signed the Grant Agreement no. 779790 for the implementation of the project EUROPEAN DATA INCUBATOR (“EDI”) within the framework of the European Union’s Horizon 2020 Research and Innovation programme (the “Grant Agreement”)

The Beneficiary has received the favourable resolution by the external evaluators and therefore is entitled to receive funding and services according to the terms and conditions set out under this Contract and in accordance with the Guidelines for Applicants of EDI open call (Annex 2)

The Contract aims at defining the framework of rights and obligations of the Contracting Parties for the development of the Project as defined in Annex 1.

The funds received by the Beneficiary are owned by the EC. The Contractor is a mere holder and manager of the funds.

Article 1 – Entry into force of the contract and Termination

This Contract shall enter into force on the day of its signature by the last Contracting Party. The termination of the Contract will be subject to the terms and conditions set out in Annex 2 – Guidelines for Applicants.

Article 2 – Obligations and Responsibilities of the Beneficiary

The obligations and responsibilities of the Beneficiary are defined in detail in the Annex 2 - Guidelines for Applicants.

Additionally, the Beneficiary shall take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, personal or any other interests liable to influence the impartial and objective performance of the Project. In case the Beneficiary is involved in a conflict of interest or in a risk of conflict of interest, the Beneficiary must formally notify this situation to the Contractor without delay and immediately take all the necessary steps to rectify this situation.

[for startups]:

The Beneficiary commits to set up a legal SME if reaching phase 2 (Experiment), as per the Guidelines for Applicants. To this end, the Beneficiary signs the Commitment to set up a SME contained in Annex 3. at the time of signature of this Contract.

Once the SME is legally set up, the Beneficiary will sign the Declaration of SME status contained in Annex 4 and will provide the relevant documentation.

Article 3 – Breach of Contractual obligations

In the event the Contractor identifies that the Beneficiary:

- i. Breached its obligations under the Contract, including the lack of impartial or objective performance of the Project because of conflicts of interest;
- ii. Stopped to carry out its business object of this Contract and therefore is not able or willing to continue the Project;
- iii. Is engaged in a bankrupt or receivership process.

The Contractor will give written notice requiring that such breach to be remedied within 30 days.

In case the Beneficiary has not brought remedies from the notice, the Contractor may decide to terminate the contract unilaterally.

Moreover, in the event the breach of the contractual obligations has been manifestly intentioned or with gross negligence, the Contractor may request the Beneficiary the refund of the payments made to date.

Article 4 – Financial contribution and financial provisions

4.1. Maximum financial contribution

The maximum financial contribution to be granted to the Beneficiary shall not exceed the amount of One Hundred Thousand Euros (100,000€).

4.2. Distribution of the financial contribution

The financial contribution to be granted to the Beneficiary shall be calculated and distributed in accordance with the provisions of the Guidelines for Applicants.

In any case, the financial grant to be paid will always be subject to:

- a favourable resolution by the evaluators and coaches responsible for assessing the Project in each of the stages (a set of KPIs will be set-up by coaches and sub-grantees and their achievement monitored during the incubation process execution)
- the availability of funds in EDI bank account during the relevant payment period
- The prior written notice to the Beneficiary of the date and amount to be transferred to its bank account (Annex 5 - Bank account information form), giving the relevant references.
- Payments to the Beneficiary will be made by the Contractor. In particular:

- The Contractor reserves the right to withhold the payments in case the Beneficiary does not fulfil with its obligations and tasks as per Annex 2 - Guidelines for Applicants.
- Banking and transaction costs related to the handling of any financial resources made available to the Beneficiary by the Contractor shall be covered by the Beneficiary
- Payments will be released no later than fifteen (15) natural days after the notification by the Contractor
- The Beneficiary is responsible for complying with any tax and legal obligations ensuring that might be attached to this financial contribution.

4.3. Payments schedule

The payment schedule is directly linked to the relevant phase of the Project as per the Guidelines for Applicants (Annex 2).

Expected date of payment	Amount to be paid	Linked phase
October 2018	5,000€ (subject to the attendance to Datathon)	Phase 1 - EXPLORE
3 payments distributed from November 2018 to March 2019	Up to 80,000€ (depending on completion of defined KPIs)	Phase 2 - EXPERIMENT
April – May 2019	Up to 15,000€ (depending on completion of defined KPIs)	Phase 3 - EVOLVE

The Beneficiary is entitled to receive exclusively those payments allocated to each specific stage of the Project provided that the conditions under Article 4.2 are met.

Article 5 – Liability of the Beneficiary

Neither the Contractor nor the EC can be held liable for any acts or omissions of the Beneficiary in relation to this Contract.

At the same time, the Beneficiary is responsible for any act or omission that causes damage to the Contractor and/or the EC in relation to this Contract. If the Beneficiary is a Start-up, all its members will be jointly responsible for the damages caused to the Contractor.

The Beneficiary shall bear sole responsibility for ensuring that their acts within the framework of this Contract do not infringe third parties rights.

Article 6 – Confidentiality

6.1. Principles

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.

The data included in Annex 6 as Background and any other datasets made available to the Beneficiary will be understood to be “Confidential”.

6.2. Obligations

The Contracting Parties agree that such information is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information, and each of them undertake that:

- i. It will not, during the term of the Project and for a period of five (5) years from the expiration date of the EDI Project on 30 June 2021, use any such information for any purpose other than in accordance with the terms of the Contract.
- ii. It will, during the term of the Project and for a period of five (5) years from the expiration date of the EDI Project on 30 June 2021, treat the same as (and to procure that the same be kept) confidential, provided always that such agreement and undertaking shall not extend to any information which the receiving Party can show:
 - a. Was, at the time of disclosure to the concerned Contracting Party, published or otherwise generally available to the public;
 - b. has, after disclosure to either of the Contracting Parties, been published or become generally available to the public otherwise than through any act or omission on the part of the receiving Party,
 - c. was already in the possession of the Contracting Parties, without any restrictions on disclosure, at the time of disclosure, or
 - d. was rightfully acquired from others without any undertaking of confidentiality; or
 - e. is subsequently independently developed by the Contracting Parties without use of the information provided by the disclosing party.
- iii. it will, during the term of the Project and for a period of five (5) years from the expiration date of the EDI Project on 30 June 2021, take the appropriate measures to guarantee the confidentiality of the information provided and the Contractor may request at any time information about these measures and their compliance.
- iv. it may disclose confidential information to their personnel or third parties involved in the action only if they:
 - a. need to know to implement the Contract and

- b. are bound by an obligation of confidentiality.

In case of breach of the confidential rules hereinabove set, the Contracting Party breaching the confidentiality will remain solely liable towards possible claims.

Article 7 – Data protection

7.1. Data protection obligations

The Contracting Parties have the obligation to abide by the Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

The processing of personal data shall be carried out lawfully, fairly and in a transparent manner, collected for specified purposes and adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

The Beneficiary will use and process the data only for the purposes of this Contract and during the length of the Contract. Any unauthorised use is forbidden. In any event, the Contractor will not be held responsible for any abusive use of data incurred into by the Beneficiary.

The Beneficiary shall not to try to re-identify anonymised data. In the event that re-identification occurs, the Beneficiary commits not to use such data.

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

7.2. New data produced

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

Article 8 – Intellectual property rights

8.1. Results of the Project

The results developed during the Project shall be exclusively property of the Beneficiary.

8.2. Ownership of the data

The ownership of the data provided by the consortium data providers will be always from the partner providing the data, as per article 7 of the Guidelines for Applicants (Annex 2).

The data provided by the data providers in the consortium and for which use access is granted to the Beneficiary is detailed in Annex 6 (Background). The Beneficiary shall not, in case of technical mistake, use the datasets not listed explicitly in Annex 6.

Article 9– Force Majeure

“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 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.

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.

No Contracting Party shall be considered to be in breach of its obligations and tasks if such breach is caused by force majeure. A Contracting Party will notify the other Contracting Party of any force majeure as soon as possible. In case the Beneficiary is not able to overcome the consequences of Force Majeure within thirty (30) calendar days after such notification, the Contractor will decide accordingly including the termination of the Contract.

Article 10 – Information and communication

10.1. Information and communication towards the EC

The Beneficiary 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. Unless the EC requests otherwise, any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc.), must specify that the project has received research funding from the EC and display the European emblem.

In particular, the Beneficiary must include the following text: For communication activities: “This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 779790”. For infrastructure, equipment and major results: “This [infrastructure][equipment][insert type of result] is part of a project that has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 779790”.

When displayed in association with a logo, the European emblem should be given appropriate prominence. This obligation to use the European emblem in respect of projects to which the

EC contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the emblem or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, the Beneficiary is exempted from the obligation to obtain prior permission from the EC to use the emblem.

Any publicity made by the Beneficiary in respect of the project, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that the EC is not liable for any use that may be made of the information contained therein.

The EC may use, for its communication and publicising activities, information relating to the action, documents notably summaries for publication and public deliverables as well as any other material, such as pictures or audio-visual material received from any beneficiary (including in electronic form). The right to use a beneficiary's materials, documents and information includes: (a) use for its own purposes (in particular, making them available to persons working for the EC or any other EU institution, body, office or agency or body or institutions in EU Member States; and copying or reproducing them in whole or in part, in unlimited numbers); (b) distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes); (c) editing or redrafting for communication and publicising activities (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation); (d) translation; (e) giving access in response to individual requests under Regulation No 1049/200127, without the right to reproduce or exploit; (f) storage in paper, electronic or other form; (g) archiving, in line with applicable document-management rules, and (h) the right to authorise third parties to act on its behalf or sub-license the modes of use set out in Points (b), (c), (d) and (f) to third parties if needed for the communication and publicising activities of the EC.

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

Upon a duly substantiated request by the Contractor on behalf of the Beneficiary, the EC may agree to forego such publicity if disclosure of the information indicated above would risk compromising the Beneficiary's security, academic or commercial interests.

10.2. Information and communication among the Contracting Parties

Any notice to be given under this Contract shall be in writing to the addresses and recipients listed above.

Any change of persons or contact details shall be notified immediately to the Contractor. The address list shall be accessible to all concerned.

Article 11 – Financial audits and controls

The EC may, at any time during the implementation of the Project and up to five years after the end of the EDI project (foreseen for 30 June 2021), arrange for financial audits to be carried out, by external auditors, or by the EC services themselves including the European Anti-Fraud office (OLAF), on the Beneficiary. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the EC. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the Grant Agreement. They shall be carried out on a confidential basis.

The Beneficiary shall make available directly to the EC all detailed information and data that may be requested by the EC or any representative authorised by it, with a view to verifying that the Grant Agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data must be precise, complete and effective.

The Beneficiary shall keep the originals or, in exceptional cases, duly authenticated copies – including electronic copies - of all documents relating to the Contract until 2026. These shall be made available to the EC where requested during any audit under the Grant Agreement.

In order to carry out these audits, the Beneficiary 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 Beneficiary's offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the project. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form.

On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by the EC or its authorised representative to the beneficiary concerned, which may make observations thereon within one month of receiving it. The EC may decide not to take into account observations conveyed or documents sent after that deadline. The final report shall be sent to the beneficiary concerned within two months of expiry of the aforesaid deadline.

On the basis of the conclusions of the audit, the EC shall take all appropriate measures which it considers necessary, including the issuing of recovery orders regarding all or part of the payments made by it and the application of any applicable sanction.

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.

Article 12 – Assignment and subcontracting

The Beneficiary shall not assign or transfer in whole or in part any of its rights or obligations under this Agreement without the Contractor express prior written consent.

Article 13 – Language

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

Article 14 – Amendments

Amendments or changes to this Contract shall be made in writing and signed by the duly authorized representative of the Contracting Parties.

Nevertheless, In the event the EC modifies the conditions, the Contractor will amend the Contract accordingly.

Article 15 – Applicable Law

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

Article 16 – Settlement of disputes

If the Contracting Parties are unable to resolve a dispute amicably, such dispute will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators in Brussels.

Each of the Contracting Parties to the dispute shall appoint one (1) arbitrator and the two (2) arbitrators so appointed shall elect the presiding arbitrator. Should a Party to the dispute which should appoint an arbitrator fails to do so within fourteen (14) days of the delivery of the written notice to do so from the other Party to the dispute or should the appointed arbitrators fail to reach agreement on the presiding arbitrator within fourteen (14) days after

their appointment, such arbitrator shall be appointed in accordance with the Rules upon request of any of the Parties to the dispute.

The seat of arbitration shall be Brussels.

The Contracting Parties agree that the language of the arbitration, including oral hearings, written evidence and correspondence, shall be English.

A duly rendered arbitration award shall be final and binding on the Contracting Parties to the dispute. Each Contracting Party to the arbitration conducted in accordance with this section hereof shall bear its own expenses incurred in connection with such arbitration, including fees of its legal counsels. All other costs and expenses shall be apportioned between the Contracting Parties to the arbitration in accordance with the decision of the arbitrators.

Nothing in this Contract shall the Contracting Parties right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

AS WITNESS:

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

For [ORGANISATION_NAME]
Mr/Ms [NAME SURNAME]
[POSITION_IN_ORGANISATION] (if organisation)

Signature

Done at [Place] on [Date]

For [ORGANISATION_NAME]
Mr/Ms [NAME SURNAME]
[POSITION_IN_ORGANISATION] (if organisation)

Signature

Done at [Place] on [Date]

ANNEX 1 – Project text

[This refers to the proposal after introducing the changes, if any, during the negotiation between phase 0 and phase 1]

ANNEX 2 – Guidelines for Applicants

[This refers to the Guidelines for applicants published by the time the call is open]

ANNEX 3 – Commitment to set up a SME

[This refers to the commitment of startups to set up a legally registered SME if reaching the Experiment phase]

We, the undersigned [full name], with identity card / passport number [...], with legal address in [...], [full name], with identity card / passport number [...], with legal address in [...], [full name], with identity card / passport number [...], with legal address in [...], [full name], with identity card / passport number [...], with legal address in [...],

hereby state that we are informed of our obligation to set up a legally registered SME in a country that is eligible under the EDI first open call, should we reach the Experiment phase.

We hereby commit to comply with this obligation as soon as possible and no later than the date of beginning of the Experiment phase of the EDI incubation programme.

Yours faithfully,

[Signatures of all individuals composing the startup]

Date and place

ANNEX 4 – Declaration of SME status

Add the SME checklist table under bit.ly/EDI-Call1-SMEChecklist

ANNEX 5 – Bank account information form

ACCOUNT HOLDER (as declared to the bank)

Full name:

Identity card / password / Tax identification number in case of company:

Address:

BANKING DETAILS

Bank Name:

Address:

IBAN Code (*Compulsory for European Countries*):

Account number:

BIC / SWIFT code (*Compulsory for all countries*):

If needed, enter the same details corresponding to the intermediary bank.

Any remarks:

ANNEX 6 – Background

In the event the subgrantee is selected for the EXPERIMENT phase, the use of the following datasets is guaranteed by the data provider whose challenge was selected in Annex 1. The use of the dataset(s) is constrained only during EDI sub-grantee execution. The ownership of the data is from the data provider, in this case *[add NAME]*. Any further use of the data outside of the scope of the project is NOT authorized and should be discussed directly between the sub-grantee and the data provider.

[Specify datasets - This refers to the data provided by EDI data providers and for which the Beneficiary has use access. It will clearly identify the data provided by the Data Provider and for which use access is granted to the Beneficiary]