



Sub-Grant Agreement

Agreement Number: DEMETER-OC2-2022/ 



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No. 857202

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Contracting parties

WATERFORD INSTITUTE OF TECHNOLOGY (WIT), established in CORK ROAD, WATERFORD, Ireland, VAT number: IE9503034A, represented for the purposes of signing the Agreement by VP Research, Innovation & Graduate Studies, Mark White, legal representative of WIT.

Hereinafter referred as the “Contractor”

Of the one part,

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

Hereinafter referred as the “Beneficiary”

The “Beneficiary” is acting on behalf the following partner(s) as the Consortium leader:

Partner 1 Leader: [ENTITY_NAME], an ENTITY organized under the laws of [COUNTRY], established in [LEGAL_ADDRESS], with VAT number [VAT_NUMBER], duly represented by [LEGAL_REPRESENTATIVE], [LEGAL_REPRESENTATIVE_POSITION],

Partner 2: [ENTITY_NAME], an ENTITY organized under the laws of [COUNTRY], established in [LEGAL_ADDRESS], with VAT number [VAT_NUMBER], duly represented by [LEGAL_REPRESENTATIVE], [LEGAL_REPRESENTATIVE_POSITION],

Partner 3: [ENTITY_NAME], an ENTITY organized under the laws of [COUNTRY], established in [LEGAL_ADDRESS], with VAT number [VAT_NUMBER], duly represented by [LEGAL_REPRESENTATIVE], [LEGAL_REPRESENTATIVE_POSITION],

It will be the responsibility of the Beneficiary to establish its own agreement with the other partner(s).

of the other part

Hereinafter collectively referred as the “Contracting Parties”

HAVE AGREED to the following terms and conditions including those in the following Annexes, which form an integral part of this DEMETER Open Call #2 - DEPLOY Sub-Grant Agreement (hereinafter referred as the “Contract”):

General Provisions

The European Commission (hereinafter referred as the “EC”) and the Contractor, as a member of the DEMETER consortium, have signed the Grant Agreement no 857202 for the implementation of the project “Building an Interoperable, Data-Driven, Innovative and Sustainable European Agri-Food

Sector” (Acronym: DEMETER) within the framework of the Programme H2020-DT-2018-2020/H2020-DT-2018-2.

The Beneficiary has received the favourable resolution by the external evaluators and therefore is entitled to receive funding and services according to the terms and conditions set out under this Sub-Grant Agreement and in accordance with the Annex 2: Guidelines for Applicants.

This Contract aims at defining the framework of rights and obligations of the Contracting Parties.

The Funding received by the Beneficiary is property of the EC. The Contractor is mere holder and managers of the funds.

Article 1 – Entry into force & Termination of the contract

1.1 Entry into force

This Contract shall enter into force on the day of its signature by the last Contracting Party. The Contractor shall sign this contract, only after all of the following documents have been received from the Beneficiary:

- The original signed Consortium Declaration of Honour (as given in Annex 5 of this Contract);
- *SME Declaration* form (as given in Annex 6 of this Contract);
- Copy of ID-card or Passport of legal representative(s) of the SME;
- Copy of the original Extract of SME registration;
- Proof of VAT registration;
- Bank Information Form (as given in Annex 7 of this Contract).

All documents shall be sent to the Contractor first via email to the following address: ???@???.??, while the Annexes 2, 4 and 4.1 of this Contract will also be sent as originals, via regular mail, to the following address:

WATERFORD INSTITUTE OF TECHNOLOGY
Main Campus Cork Road,
Waterford City
Co. Waterford, Ireland

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

1.2 Contract Termination

This Contract covers all three phases (DESIGN, INSTALL & OPERATE, ASSESS) of DEMETER DEPLOY activities.

At the end of each the aforementioned phases, an evaluation of the Beneficiary projects’ progress will take place as fully described in Annex 2 “Guidelines for Applicants”.

In case the evaluators of the Beneficiary projects’ progress do not receive or accept any due deliverable, at the end of each phase, this Contract is automatically terminated, and the Beneficiary fully accepts that no additional payments related to the phase of the missing or not accepted deliverable will be made by the Contractor.

This Contract also terminates in the event of unjustified withdraw by the Beneficiary of the current fulfilment of its Contract obligations. “Unjustified withdraw” covers any situation out of “Force Majeure” qualification which determines the absence of performance of the Beneficiary contractual obligations. In this particular case, it entitles the Contractor the right to claim the Beneficiary the full refund of all payments made to the Beneficiary up to date.

Article 2 – Obligations and Responsibilities of the Beneficiary

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.

The Beneficiary confirms and guarantees that a Consortium Agreement between the members of the consortium has been signed clarifying all participation, financial and IP rights issues. In more details:

- The Consortium leader (beneficiary) declares that all Consortium partners have agreed on their roles and budget shares.
- The Consortium leader (beneficiary) is solely responsible to distribute the budget shares to Consortium partners in accordance to the Consortium Declaration of Honour.
- DEMETER Consortium bears no responsibility in case the Consortium leader (beneficiary) violates the mutual agreement set in the Consortium Declaration of Honour.
- DEMETER Consortium bears no responsibility in case of dispute among consortium partners regarding IP rights.

The above are also evident in the attached “Consortium Declaration of Honour”.

The Consortium leader (beneficiary) declares that no Consortium partner will receive an amount greater to 100.000 EUROS in the context of this sub-grant agreement.

Article 3 – Breach of Contractual obligations

In the event of the breach of the contractual obligations by the Beneficiary, the Contractor reserves the right to claim the Beneficiary the full refund of all payments made to the Beneficiary up to date. The breach of the contractual obligations by the Beneficiary shall be determined by the DEMETER Consortium or DEMETER Project Coordinator. Not participation in the Activities (unless in the case of Force Majeure) or participating in the Activities in a manner which intentionally disrupts the Activities, shall be deemed as breach of the contractual obligations by the Beneficiary. The provision of false or misleading declarations by the Beneficiary or any unsolved situation of conflict of interest also constitute examples of breach of contractual obligations by the Beneficiary.

Article 4 – Financial contribution and financial provisions

4.1 Maximum financial contribution

The maximum financial contribution to be granted by the Contractor to the Beneficiary shall not exceed the amount of One Hundred and Fifty Thousand Euros (150,000€).

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 Annex 2: Guidelines for Applicants.

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

- A favourable resolution by the evaluators and DEMETER project responsible for assessing the Project in each of the phases;
- Reception and acceptance of the relevant Financial Statement (F1, F2, and F3) of the beneficiary;
- The Beneficiary Bank Account (Annex 7) matches the Financial Statement Bank Account;
- The availability of funds in Contractor bank account during the relevant payment period
- 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 charged by any of the banks related to the handling of any financial resources made available to the Beneficiary by the Contractor shall be covered by the holder of the bank account which originated the cost. This means that the Contractor bears the cost of transfers charged by its bank and the Beneficiary bears the cost of transfers charged by its bank.;
- Payments will be released no later than thirty (30) natural days after the notification by the Contractor;
- The Beneficiary is responsible for complying with any tax and legal obligations 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	Condition / Event	Linked Phase
June 2022	Up to 30.000 EUR	Achievement of milestones and successful review of DESIGN report	DESIGN
March 2023	Up to 90.000 EUR	Achievement of milestones and successful review of INSTALL & OPERATE report	INSTALL & OPERATE
May 2023	Up to 30.000 EUR	Achievement of milestones and successful review of ASSESS report	ASSESS

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

Article 5 – Liability of the Beneficiary

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, the Data Provider, and/or the EC in relation to this Contract.

The Beneficiary shall bear sole responsibility for ensuring that their acts within the framework of this Contract do not infringe third parties' rights. There is no joint liability between the Contracting Parties.

Article 6 – Confidentiality

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

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

- i) it will not, during the term of the Sub-project and for a period of five (5) years from the expiration date of the Sub-project, 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 Sub-project and for a period of five (5) years from the expiration date of the Sub-project, 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:
 - was, at the time of disclosure to the Subcontractor, published or otherwise generally available to the public, or
 - 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, or
 - was already in the possession of the Contracting Parties, without any restrictions on disclosure, at the time of disclosure to the Party, or
 - was rightfully acquired from others without any undertaking of confidentiality; or
 - is subsequently independently developed by the Contracting Parties without use of the information provided by the disclosing party.

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 – 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 Agreement, which was not attributable to error or negligence on their part and which proves to be inevitable in spite of the exercising all due diligence.

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 10 (ten) days after such notification, the Contractor will decide accordingly including the termination of the Contract.

Article 8 – Information and communication

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 Contractor, DEMETER consortium or EC are not liable for any use that may be made of the information contained therein.

The Contractor, DEMETER consortium and EC shall be authorized to publish, in whatever form and on or by whatever medium, the following information:

- the name of the Beneficiary;
- contact address of the Beneficiary;
- the general purpose of the project;
- the amount of the financial contribution of the EC.

The Beneficiary shall ensure that all necessary authorizations for such publication have been obtained and that the publication of the information by the Contractor, DEMETER Consortium or EC does not infringe any rights of third parties.

Unless the EC or the Coordinator requests or agrees otherwise or unless it is impossible, any communication activity related to the action (including in electronic form, via social media, etc.), any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc.), and any infrastructure, equipment and major results funded by the grant must:

- display the EU emblem,
- display the HUBCAP logo and,
- include the following text:

“The NAME_of_PROJECT/PILOT has indirectly received funding from the European Union’s Horizon 2020 research and innovation action programme, via the Open Call #2 - DEPLOY issued and executed under project DEMETER (grant agreement No 857202)”

When displayed in association with a logo, the EU emblem should be given appropriate prominence. This obligation to use the European emblem in respect of projects to which the EC contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, the Beneficiary is exempted from the obligation to obtain prior permission from the EC to use the emblem. Further detailed information on the EU emblem can be found on the Europa web page.

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.

Article 9 – Data protection

9.1 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, neither the Contractor nor the Data Provider will be held responsible for any abusive use of data incurred into by the Beneficiary.

The Beneficiary shall not 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 pilot implementation, except where an agreement is entered into with the Data Provider.

9.2. New data produced

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

Article 10 – 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 DEMETER project (foreseen for 28 February 2023), 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 2028. 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 11 – 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 12 – Language

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

Article 13 – Applicable Law

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

Article 14 – 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 limit 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 two (2) copies:

<p>For WIT (the Contractor) Mr Mark White Vice President Signature</p> <p>Done at XXXXXXXX_____ on DD/MM/2022</p>	<p>For [SME_NAME] (the Beneficiary) Mr/Ms [NAME SURNAME] [POSITION_IN_COMPANY] Signature</p> <p>Done at _____ on DD/MM/2022</p>
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Annexes

Annex 2: Guidelines for Applicants

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

Annex 4.1: Proposal

[This refers to the proposal after introducing the changes, if any, during the negotiation phase.]

Annex 5: Consortium Declaration of Honour

[This refers to the form submitted with the proposal]

Annex 6: SME Declaration

[This refers to the form(s) submitted with the proposal in the application phase]

Annex 7: Bank account information

[This refers to the document including the bank account information of the coordinator where the funds will be transferred]