

DRAFT RESEARCH CONTRACT

[Project acronym – project name]

Between:

Accent Inkubator GmbH

.....,
(hereinafter called the “**Phi-Lab Austria**”),
located at:

Viktor Kaplan Straße 2, A 2700 Wiener Neustadt
Office Park 2, A 1300 Schwechat

.....,

acting at request of the European Space Agency and managing ESA Phi-Lab Austria

Represented by Mr/Ms Michael Moll , its General Manager

of the one part,

And:

.....,
(hereinafter called the “Contractor”)

Whose Registered Office is at:

.....,
.....,
.....,

Whose Trade Register Number in is:,

Represented by **[Name and function to be specified]** Mr/Ms....., its
.....,

of the other part,

(together, hereinafter referred to as the “Parties” or individually as a “Party”)

Commencement Date of the Support :

Planned Support End Date:

the following has been agreed:

P R E A M B L E

1. WHEREAS the European Space Agency (the Agency) is an intergovernmental organisation established by the Convention approved by the Conference of plenipotentiaries of its Member States on 30 May 1975 and which entered into force on 30 October 1980.
2. WHEREAS Article II of the Convention assigns to the Agency the task to promote cooperation in space research and technology and their space applications and to elaborate and implement activities and programmes in the space field.
3. WHEREAS as part of the commercialisation initiative the Agency has set up the ESA Phi-LabNET initiative to support promising space related research activities and deliver innovation close to its-entrance to the entry to the market.
4. WHEREAS the Agency has chosen to implement and manage the Phi-Lab Austria through ESA contract.
5. WHEREAS the Phi-Lab Austria is partly funded by the European Space Agency.
6. WHEREAS the Contractor wishes to participate in the Phi-Lab Austria and benefit from the assistance which may be offered to it through the provisions of this Contract.
7. WHEREAS, as part of the assistance offered to the Contractor, the ESA Phi-Lab Austria and the Contractor will sign a service agreement of same date with this Contract for the provision of related equipment and services to the Contractor (see Appendix 2).
8. WHEREAS, as part of the assistance offered to the Contractor, the Phi-Lab and the Contractor will sign a service agreement of same date with this Contract for the provision of workspaces to the Contractor (see Appendix 2b).

DEFINITIONS

For the purpose of this Contract, the following words shall have the meanings assigned to them:

“Activity” means all the activities that the Contractor will undertake under this Contract in relation to its participation in the Phi-Lab Austria programme, including the preparation of the Executive Summary, the Mid Term Report, the Final Report, and all other obligations and deliverables to be made by the Contractor under this Contract.

“Agency’s Own Requirements” means the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1(a) and (b) of the European Space Agency Convention.

“Contractor for the ESA Phi-Lab Austria” (referred to as “the Contractor”) means the entity that benefits from the Phi-Lab Austria support in implementing its research activity.

“Alumnus” means an entity which has successfully completed a research project at the Phi-Lab Austria.

“Annual Performance Report” has the meaning set out in Appendix 1, section 4.1.4.

“Phi-Lab Austria” means an entity or a consortium providing research mentoring, technical support, business development support and access to facility and equipment to Contractors.

“CCN” means a Contract Change Notice.

“CRB” means a Change Review Board. A board consisting of a contractual and a technical representative(s) of each Party established to discuss and agree upon the approval or rejection of a change proposal, and a final CCN.

“Commencement Date” means the date that this Contract comes into force, as set out in Article 5.

“Contract” means an agreement established in writing between the ESA Phi-Lab Austria and the Contractor regulating the Activity.

“Contract End Date” means the last day when the Contract is in effect. The date on which this Contract comes to an end, as set out in Article 5.

“Contract Term” means the period between the Commencement Date and the Contract End Date.

“Cost Report” means a report detailing all costs incurred in relation to the Activity, to be submitted by the Contractor to the ESA Phi-Lab Austria.

“Deliverables” has the meaning set out in Article 2.

“Disclosing Party” means the Party disclosing Proprietary Information.

“Equipment” has the meaning set out in Article 3.4.

“Firm Fixed Price” The price of the Contract shall not be subject to any adjustment or revision by reason of the actual costs incurred by the Contractor in the performance of the Contract.

“Phi-Lab Austria logo” means the logo provided by ESA to be used by ESA Phi-Lab Austria.

“Phi-Lab Partner” means an entity that is working together with the ESA Phi-Lab Austria to support the activities described under the Agency’s Statement of Work.

“Executive Summary” has the meaning set out in Appendix 1, section 4.1.3.

“Final Report” means the document presenting all the Activity undertaken by the Contractor during the Contract Term, as further defined in Appendix 1, section 4.1.2.

“Force Majeure” means an event which is, unforeseeable, unavoidable and external at the time of Contract signature, occurs beyond the control of the affected Party and renders the performance of the Contract impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.

“Innovation Seed Funding” means a cash contribution to the Contractor paid by the ESA Phi-Lab Austria. There shall be no requirement for the Contractor to pay back the received incentive to the ESA Phi-Lab Austria as long as corresponding expenses are eligible. The Agency’s part of the Innovation Seed Funding is considered as payment for procurement according to the conditions set out in this Contract.

“Intellectual Property Rights” means all Registered Intellectual Property Rights, and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world.

“Midterm” means the midpoint date between the Commencement Date and the Contract End Date.

“Midterm Report” has the meaning set out in Article 2.1.1.

“Participating States” means a Member or non-Member State participating in a given European Space Agency programme according to Article V.1 (a) and (b) of the European Space Agency Convention.

“Participating State’s Own Public Requirements” means a public programme in the field of space research and technology and their space applications fully funded or funded to a substantial extent by the Participating State.

“Proprietary Information” has the meaning set out in Article 12.

“Receiving Party” means the Party receiving Proprietary Information.

“Registered Intellectual Property Rights” means all rights granted by law through registration with an authority or office (whether actually registered or in the form of applications) including all registered patents, utility models, designs, topography rights, domain names and trade-marks or equivalent rights and rights of action anywhere in the world.

“Rental Agreement” the agreement set out in Appendix 2b and regulating the rental of Phi-Lab workspaces between the Phi-Lab and the Contractor.

“Service Agreement” the agreement set out in Appendix 2 and regulating the provision of support (including access and use of laboratories, facilities and equipment) from the Phi-Lab to the Contractor.

“Technical Support” has the meaning set out in Article 3.1.

“Text Line” has the meaning set out in Article 9.2.1.

“Third Party” means a natural or legal person other than the Parties to this Contract.

“Third-Party Services” has the meaning set out in Article 4.

ARTICLE 1 - SUBJECT OF THE CONTRACT, APPLICABLE DOCUMENTS

1.1 Subject of the Contract

The Contractor undertakes to perform the Activity "[TITLE]" and the ESA Phi-Lab Austria undertakes to provide technical support, business support, IPR/Legal advice, access to related equipment and facilities and up to the maximum Innovation Seed Funding Amount identified under Article 6.1.1 (hereinafter also referred to as the "**Phi-Lab's Support**") and deliver the items described in Article 2 hereto.

1.2 Applicable documents

The Activity and the Phi-Lab's support shall be performed in accordance with the following applicable documents listed hereunder in order of precedence, in case of conflict:

- a) This Contract, including the Intermediate Report (for projects longer than 1 year), the Mid-Term Report and the Final Report templates attached herewith as Appendix 3;
- b) The Standard Requirements for Management, Reporting, Meetings and Deliverables as set out in Appendix 1 hereto;
- c) The Service Agreement attached herewith as Appendix 2
- d) The Rental Agreement attached herewith as Appendix 2b
- e) [OPTION: The Software Licence Agreement attached herewith as Appendix 2c END OPTION];
- f) The Minutes of the negotiation meeting held on the, reference; not attached hereto but known to both Parties;
- g) The Contractor's Research Proposal Application ref., , dated, Version, not attached hereto but known to both Parties.
- h) The latest updated version of the Preliminary Report, the Mid-Term Report, and the Final Report templates will be made available to the Contractor by the Phi-Lab. The Parties agree that any change regarding these templates will not require a Contract Change Notice.

ARTICLE 2 – DELIVERY

The Contractor undertakes to deliver the items as described here below (the "Deliverables"). These shall be sent to the Phi-Lab Manager mentioned in Article 8 a) of the Contract, unless otherwise specified, in accordance with the following provisions:

2.1 Documentation

The Contractor shall during the performance of this Contract, deliver the required documentation and reports in searchable, indexed and not encrypted PDF and original (WORD) format, in accordance with the following provisions

2.1.1 Preliminary Report (applicable for projects longer than 1 year)

The draft Preliminary report is due only for projects longer than 1 year.

The Intermediate Report shall be submitted at least two (2) weeks in advance of the Intermediate Review meeting by the Contractor to the ESA Phi-Lab

Austria. This report shall describe the work carried out so far by the Contractor under the Contract.

The key content of the Intermediate Report shall be presented by the Contractor to the Phi-Lab at the Intermediate Review.

2.1.2 Mid-Term Report

The draft Mid-Term Report shall be submitted at least two (2) weeks in advance of the Mid-Term Review meeting by the Contractor to the ESA Phi-Lab Austria. This report shall describe the work carried out so far by the Contractor under the Contract.

The key content of the Mid-Term Report shall be presented by the Contractor to the ESA Phi-Lab Austria at the Mid-Term Review.

2.1.3 Final Report and Executive Summary

The Contractor shall deliver the draft versions of the Final Report and the Executive Summary using the Final Report template applicable to this Contract at least one (1) month prior to the Support End Date, to the ESA Phi-Lab Austria.

The ESA Phi-Lab Austria shall review the draft version of the Final Report and the Executive Summary and provide comments to the Contractor at latest two (2) weeks before the Support End Date.

The Executive Summary shall be free from any Proprietary Information. The Executive Summary may be used by the ESA Phi-Lab Austria and the Agency for promotional purposes.

The key content of the Final Report and the Executive Summary shall be presented by the Contractor to the ESA Phi-Lab Austria at the Final Review.

The final versions of the Final Report and the Executive Summary shall be delivered by the Contractor at the latest at the Support End Date and no later than **[INSERT DATE]**.

2.2 Other Deliverables

The Contractor shall deliver to the Phi-Lab Austria, not later than at the Contract End Date or upon termination of this Contract, a proof of the developments carried out as part of the Research Project. These include the DOIs of all research papers and articles published related to the research activity, products, services, prototypes, breadboards. The Phi-Lab Austria will then deliver to or share these with the European Space Agency.

The ESA Phi-Lab Austria and the Agency will use these deliverables for communication, dissemination and publicity purposes, and for verifying correct use of the Innovation Seed Funds.

2.2.1 Software

The Contractor shall deliver a copy of the software, mathematical modules, data files, design files and computer programmes or a demonstrator, if any of the above has been developed under the Contract. This may be a sample version of the application. If this is not feasible, and subject to approval by the ESA Phi-Lab Austria, a video with a live demonstration of the software and its functionalities shall be delivered.

In the event the ESA Phi-Lab Austria, the Agency or any of its Participating States require to use the software developed under this Contract for its/their Own Requirements, the Contractor shall provide the appropriate licence. The terms and conditions of such licence shall be agreed beforehand between the Agency or its Participating States and the Contractor. For the sake of understanding, the relevant provisions of Article 12 below shall apply.

2.2.2 Hardware

- a) The Contractor shall deliver a product/a prototype of the hardware, or alternatively a demonstrator, if any of the above has been developed under the Contract and if it is requested by the ESA Phi-Lab Austria.

If this is not feasible, e.g. because of high production costs or the characteristics of the hardware, and is subject to approval by the Phi-Lab Austria, the Contractor may instead deliver a mock-up or a video with live demonstration of the hardware in action, developed under this Contract. The Contractor shall, however, keep the prototype for the specific use described under 2.2.2 b).

- b) The Phi-Lab Austria and/or the Agency via the Phi-Lab Austria shall have the right to loan any hardware developed by the Contractor under this Contract, for the purposes of displaying it in an exhibition or for the Phi-Lab Austria and/or the Agency's promotional purposes. This right shall expire five (5) years from the end of the Contract Term or from termination of this Contract, unless otherwise agreed in writing by the Parties.
- c) Any hardware, purchased by the Contractor using the ESA Phi-Lab Innovation Seed Fundings for the purpose of testing or developing activities (but not being part of the final product/prototype) shall be delivered by the Contractor to the Phi-Lab Austria. The Phi-Lab Austria shall use such deliverable for the benefit of other research projects, if/when needed.

2.2.3 Photographs, Video demonstrations

The Contractor shall deliver photographs and video demonstrations of the work performed under this Contract to the Phi-Lab Austria no later than the Final Review.

Such photographs and video demonstrations shall not contain any Proprietary Information and may be used by the ESA Phi-Lab Austria and the Agency for promotion only.

ARTICLE 3 –ESA PHI-LAB AUSTRIA UNDERTAKINGS

The Phi-Lab Austria undertakings under this Contract include research mentoring, technical support, business support and IPR/Legal advice at no additional cost to the Contractor and at the Contractor's request, according to the following terms:

3.1 Research Mentoring / Technical Support

- (a) A minimum of 110 hours of technical support necessary for, and directly related to the Activity (referred to as "Research Mentoring and **Technical Support**") shall be available to the Contractor.
- (b) The Technical Support shall be available to the Contractor for the duration of the Contract Term, unless a shorter period is agreed between the Parties.
- (c) Any information in documentary or other physical form provided to the Contractor as part of the Technical Support shall remain the property of the Phi-Lab and shall be returned to the Phi-Lab at the end of the Contract Term or upon the termination of this Contract.
- (d) For all matters relating to the Technical Support the responsible person is the representative for technical matters, nominated in Article 8.3 a) below.

3.2 Business Coaching

A minimum of 20 hours of business coaching necessary for, and directly related to the Activity shall be available to the Contractor.

3.3 IPR/Legal advice

A minimum of 10 hrs of IPR or legal advice necessary and directly related to the Activity shall be available to the Contractor.

3.4 Equipment and facilities

The Contractor will have access to the Equipment and Facilities of the Phi-Lab at the conditions specified in Annex 2.

It is not foreseen that the Agency will loan the Contractor any equipment, unless otherwise agreed between the Parties..

3.5 Workspaces

The Contractor will have access to the workspaces at the Phi-Lab for two persons at the conditions specified in Annex 2b.

3.6 Software

It is not foreseen that the Phi-Lab or the Agency via the Phi-Lab will licence the Contractor any software.

ARTICLE 4 - SERVICES TO BE PROVIDED BY THIRD PARTIES

The Contractor shall notify the Phi-Lab when entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity ("Third-Party Services"). The Phi-Lab shall bear no responsibility for such advice or product.

ARTICLE 5 - CONTRACT TERM

This Contract shall enter into force upon signature by the legal representatives of both Parties ("Commencement Date") and shall continue being in force until the Contract End Date, unless it is terminated in accordance with Article 16. In no case shall the Contract Term exceed the duration of two (2) years.

ARTICLE 6 – FINANCIAL CONTRIBUTION AND PAYMENT

6.1 Financial Contribution

6.1.1 The total financial contribution to the Activity **amounts to:**

xx.000 EUR
xx-thousand EURO

6.1.2 The type of price is a Firm Fixed Price.

6.1.3 The above-mentioned amount does not include any taxes and/or duties.

6.1.4 This amount shall represent a percentage ranging from 50% to 100% of the total allowable cost of the activity, subject to compliance with the following provisions:

- Work carried out by SMEs may be funded up to a maximum level of up to 80% of the total allowable cost of the activity
- Work carried out by universities and research institutions involved as subcontractors in a consortium and justifying no further commercial interest in the product or service may be funded to a maximum level of 100% if this funding does not exceed 30% of the total allowable cost of the activity; Should work need to be (sub)contracted for more than 30% of the total eligible costs, such additional share shall be co-funded up to a maximum of 50% of the total eligible costs; Universities and research institutions claiming to have any commercial interest in the future exploitation of the final product or service shall be required to demonstrate this interest. In such a case, the funding level for SME or non-SME shall apply.
- Work carried out by economic operators that are not SMEs nor universities and research institutions may be funded up to a maximum level of 50% of the total allowable cost of the activity.

6.2 Payment Terms

All payments shall be made to the Contractor according to the provisions stated in the present Article.

6.3 Categories of Payments

6.3.1 Progress Payment

- (a) The Phi-Lab shall authorise progress payment in connection with this Contract and the Activity undertaken by the Contractor. The Contractor shall provide the Phi-Lab with the supporting documentation that will justify the actual achievement of the milestone as defined in the Payment Plan specified in Article 6.4 below.
- (b) Progress payments shall not be considered as final payments. A progress payment will be deducted from the total price under this Contract.
- (c) Except with the specific agreement of the Phi-Lab, the Contractor shall not divert from uses provided for in this Contract any material or services in respect of which advances or progress payments have been made. In the event of any violation of this provision the Phi-Lab reserves the right to require the return of the advance and/or progress payments without prejudice to its rights under Article 14.

6.3.2 Final Settlement

- (a) The Contractor is allowed to claim the final settlement after fulfilment of all its obligations due under this Contract.
- (b) The final settlement to the Contractor is due upon confirmation by the Phi-Lab of the satisfactory completion of the Activity and acceptance by the Phi-Lab of all related deliverables due under the Contract.
- (c) Unless otherwise agreed between the Parties, the Final Settlement shall be made within thirty (30) days of acceptance by the Phi-Lab of the documents and fulfilment of the requirements as specified in Article 6.3.2 b) above. Only upon fulfilment of these requirements shall the invoice for the Final Settlement be regarded as due by the Phi-Lab.

6.4 The Phi-Lab shall make the following payments to the Contractor:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO	%
ADVANCE PAYMENT I: Upon signature of the Contract by both parties			35%
PROGRESS I: Upon successful Mid-Term Review, acceptance by			35%

the Phi-Lab of the Mid-Term report and all related deliverables			
FINAL: Upon successful Final Review, acceptance by the Phi-Lab of all deliverables due under the Contract and fulfilment of all contractual obligations by the Contractor under the Contract.			30%
TOTAL			100%

6.5 Payment conditions

- 6.5.1 The Contractor shall submit to the Phi-Lab all invoices for the payments due under this Contract.
- 6.5.2 Payments shall be made by Phi-Lab in EURO to the account specified by the Contractor. Such information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). Payments shall be considered as effected by the Phi-Lab on time if the Phi-Lab's orders of payment reach its bank within the payment period stipulated in Article 6.3.2 c) above.
- 6.5.3 Any special charges related to the execution of payments will be borne by the Contractor.

ARTICLE 7 – DE MINIMIS AID

The subsidies granted do not constitute aid under the de minimis regulation.

ARTICLE 8 – PARTIES REPRESENTATIVES AND COMMUNICATIONS

- 8.1 All correspondence affecting the terms and conditions of this Contract and concerning its execution shall be made or confirmed in writing. All communications or correspondence between the Parties shall be in English.
- 8.2 All correspondence for either Party shall be sent to both representatives of each Party stated in Articles 8.3 and 8.4, i.e. depending on the subject, addressed to one representative of the Party with a copy to the other one.
- 8.3 For the purpose of this Contract, the representatives of phi-Lab Austria are:

(3) For administrative matters:

Mr/Ms Susanne Stangl

Address:
.....
.....

Tel.: +.....
Email:

(b) For contractual matters:

Mr/Mr Carlos Fernandez de Retana

Address:
.....
.....

Tel.: +.....
Email:

(c) For the Phi-Lab’s technical support matters (Article 3 above):

Mr/Mr Susanne Katzler - Fuchs

Address:
.....
.....

Tel.: +.....
Email:

(3) 8.4 For the purpose of this Contract the Contractor’s representatives area) For technical matters:

Mr/Mr.....

Address:
.....
.....

Tel.: +.....
Email:

(b) For contractual and administrative matters:

Mr/Mr.....

Address:
.....
.....

Tel.: +.....
Email:

ARTICLE–9 - PUBLICITY AND VISUAL IDENTITY OF CONTRACTORS

9.1 Publicity

9.1.1 The Contractor may produce and/or disseminate communication materials, press releases or other publicity documents, including the Contractor's advertising and news bulletins, which are intended by the Contractor for the press, internet/web-sites or television, which refer to the Phi-Lab, ESA, Phi-Lab Austria or any aspect of Phi-Lab Austria activities, or permit any Third Party to do so, with a prior written consent of the Phi-Lab.

9.1.2 The Phi-Lab may produce and/or disseminate communication materials, press releases or other publicity documents which are intended by Phi-Lab Austria for the press, internet/websites or television, which refer to the Contractor or any aspect of the Contractor's activities, or permit any Third Party to do so, with a prior written consent of the Contractor's contractual representative or its duly authorised representative.

9.2 Visual Identity of the Contractor

9.2.1 The Contractor may place the Phi-Lab Austria logo and if so desired the following text line, in full and without amendment (hereinafter referred to as the "**Text Line**"), on its promotional materials and publicity documents, including exhibition and conference materials and its internet site. The logo shall be linked to www.esaphilab.at it shall be clearly stated that the Contractor is incubated under an Phi-Lab programme.

"[name of the Contractor] is participating in the ESA Phi-Lab Austria" is referred to as the Text Line to be used in connection with the Phi-Lab Austria location logo.

Use of the Phi-Lab Austria location logo and Text Line by the Contractor shall also be subject to the following additional conditions:

- (a) the Contractor shall submit to the Phi-Lab for prior written approval all promotional materials and publicity documents, on which the Text Line is to appear or is intended to be used, which approval may be withheld or withdrawn from any material or documents at any time at the discretion of the Phi-Lab;
- (b) the prior approval of the Phi-Lab for the use of the Phi-Lab Austria location logo and/or Text Line shall not constitute an endorsement or approval of the Contractor's Activity, products or services, or of their quality, technology or suitability for a particular use, neither shall it constitute verification by the Phi-Lab of the compatibility of materials produced by the Contractor with applicable law and regulations; the Contractor shall refrain from using any statements which could suggest otherwise;

- (c) any use of the Phi-Lab Austria location logo and/or Text Line on amended or revised promotional material and publicity documents shall be subject to the same approval process as the original material and documents;
- (d) the Text Line may be translated into a different language other than English, subject to the approval of the Phi-Lab; and
- (e) no use of the Phi-Lab Austria location logo neither the Text Line shall be made in connection with material, products or documents that:
 - a. constitute an infringement of law and/or legal provisions;
 - b. undermine the reputation and dignity of the Agency, ESA BICs or Phi-Lab Austria; and
 - c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

9.2.2 The Contractor shall keep appropriate records of the extent of its use of the Phi-Lab Austria location logo and Text Line, stating in particular the nature of use of the Phi-Lab Austria logo and Text Line on its material, products and documentation. The Contractor shall provide the Phi-Lab with information and documents to evidence such use.

9.2.3 The use by the Contractor of the Phi-Lab Austria location logo and Text Line shall terminate upon the termination or expiry of this Contract as described in Article 16, unless otherwise specified in writing by the Phi-Lab and the Agency and according to the provisions contained in this Contract.

9.2.4 The Contractor shall not use the official emblem of ESA, ESA BICs or Phi-Lab Austria or any other logo or trademark which may be owned or used by the Agency or the Phi-Lab for any purpose whatsoever, unless otherwise stated in this Article.

9.2.5 Alumni are allowed to use the following Text Line, together with the Phi-Lab Austria location logo.

Possible uses include their marketing materials, exhibition and conference materials (including their internet site), as long as the logo is linked to www.esaphilab.at.

Alumni identify themselves as "Alumnus" under Phi-Lab program.

The Agency may withdraw the right to use the text line at any time for any reason.

"[name of the Contractor] is an Alumnus of ESA Phi-Lab Austria.)" is referred to as the Alumni Text Line together with the Phi-Lab Austria location Logo.

9.2.6 Alumni using the Alumni Text Line have the obligation to report its use on a yearly basis to the Phi-Lab.

ARTICLE 10 – GENERAL CONDITIONS OF EXECUTION

The Contractor shall, in accordance with the Agency's Policy on the Prevention, Detection and Investigation of Fraud, to the extent allowed by applicable national law, cooperate with the Agency's investigation team in any investigation of fraud initiated by the Agency and inform its personnel of their obligation to cooperate accordingly.

The Agency's Policy on the Prevention, Detection and Investigation of Fraud is available [e at: https://esastar-publication.sso.esa.int/supportingDocumentation](https://esastar-publication.sso.esa.int/supportingDocumentation)

ARTICLE 11 - CONFIDENTIALITY

- 11.1 Each Party shall observe complete discretion regarding all matters related to the activities of the other Party and each Party shall ensure compliance by its employees and agents with the obligations of confidence set out in this Article and assumed by that Party in relation to the other Party.
- 11.2 Neither Party shall disclose any documentation, information or materials obtained from the other Party, whether marked or un-marked ("Proprietary Information"), to any Third Party whatsoever without the prior written consent of the other Party in which case the other Party may require the recipient to sign a non-disclosure agreement. For the purposes of the present Article, documentation shall include any final documentation deliverable under this Contract except for the Executive Summary.
- 11.3 Each Party may disclose Proprietary Information on a strictly "need to know" basis to:
 - its employees;
 - its professional agents;
 - Phi-Lab Austria partnersas long as they have signed an engagement of confidentiality.
- 11.4 The Contractor agrees that the Agency may use, copy or disseminate general information related to the Contractor's company (e.g. name, address, etc.) and its Activity for the Agency's Own Requirements, unless such information is marked as "Proprietary Information", in which case the provisions under Article 11.2 shall apply,
- 11.5 On the Contract End Date, or upon an earlier termination of this Contract in accordance with Article 16, the Receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Proprietary Information, with exception of the Deliverables provided by the Contractor to the Phi-Lab.
- 11.6 The obligations in this Article shall not apply to Proprietary Information:
 - which is in the public domain at the time of disclosure or becomes part of the public domain after disclosure otherwise than through a breach of this Contract;

- for which the Receiving Party can provide documentary evidence that it was in its lawful possession prior to disclosure to it by the Disclosing Party or which is lawfully and bona fide obtained thereafter by the Receiving Party from a Third Party who, to the knowledge or reasonable belief of the Receiving Party, did not receive the Proprietary Information directly or indirectly from the Disclosing Party when under a duty of confidentiality;
- which, at the time of circulation is already known by the Receiving Party (as evidence in writing) and is not hindered by any obligation not to circulate; or
- which is required to be circulated by governmental or judicial order or applicable law.

11.7 The contents of this Contract are Proprietary Information.

11.8 The obligations set out in this Article shall survive the termination or expiry of this Contract.

ARTICLE 12 – INTELLECTUAL PROPERTY

<THIS SECTION SHALL BE MODIFIED ACCORDING TO THE ESA PHI LAB BUSINESS MODEL>

12.1 Ownership of Intellectual Property Rights

The Contractor shall own all Intellectual Property Rights arising out of the Activity performed under this Contract as may be granted by law, as far as no infringement of Third-Party rights occurs.

12.2 Use of Intellectual Property Rights by the Agency

12.2.1 The Agency has the right to use non-Proprietary Information included in the deliverables under the Contract, for communication, dissemination and publicity purposes, on a royalty-free, non-exclusive and irrevocable licence under the following conditions:

- 12.2.1.1 the use is strictly for the Agency's Own Requirements, in particular to make the Contractor's deliverables containing the non-Proprietary Intellectual Property Rights available to employees and/or contractors working at the Agency, copying or reproducing them in whole or in part, in unlimited numbers,
- 12.2.1.2 for public dissemination, in particular, for publication as hard copies and in electronic or digital format, publication on the internet including social networks, public display or presentation, communicating through press information services, or inclusion in widely accessible databases.

To this extent, the Contractor shall identify which deliverables or part thereof contain Proprietary Information, on which the Agency shall not have any licence right.

12.2.2 The Agency has the right to sub-license to Third Parties its access and use rights to the Contractor's non-Proprietary Intellectual Property Rights developed under the Contract as set out in Article 12.2.1 only for the information, communication and publicity activity of the Agency, if needed.

12.3 The Contractor must ensure that it complies with its obligations under this Contract, in particular by obtaining the necessary licences and authorisations from Third Party(ies) rights, if results of the Activity are subject to any Third Party(ies) rights.

12.4 When transferring any Intellectual Property Rights, of which the Contractor retains the ownership in accordance with Article 12.1, to an assignee, the Contractor shall ensure that the Agency's rights, as set out in Article 12.2 of this Contract, are reassigned to the new assignee.

12.5 Transfer of Intellectual Property Rights outside the ESA Member States

The Contractor shall inform the technical representative of the Phi-Lab well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from this Contract.

ARTICLE 13 – LIABILITY

13.1 Limitations of Liability

13.1.1 Neither Party can exclude its liability to the other Party for:

- (a) death or personal injury caused by negligence or careless conduct by a Party or those of its employees or agents;
- (b) fraud, including fraudulent misrepresentations; and
- (c) liability as provided for under Articles 11 and/or 12 of this Contract.

13.1.2 Subject to Article 13.1.1, the liability of the Parties under or in connection with this Contract, whether arising from negligence, breach of the Contract or any other obligation or duty, shall in no case exceed an amount equal to 50,000 EURO (Fifty Thousand EURO), per event or series of connected events.

13.2 Infringements of the Law

13.2.1 The Phi-Lab or the Agency shall not be responsible if the Contractor infringes any existing and/or future national, communal or provincial laws or decrees, rules or regulations in force in Austria or in any other country whatsoever.

13.2.2 The Contractor shall indemnify the Phi-Lab from and against all claims, proceedings, damages, costs and expenses arising out of any infringement of the Contractor's obligations under this Contract.

13.3 Infringement of the Rights of the Phi-Lab's Partners

13.3.1 The Contractor shall indemnify the Phi-Lab's Partners from and against all

claims, proceedings, damages, costs and expenses arising from the infringement of Intellectual Property Rights of Third Parties with respect to the Activity performed under this Contract - excluding any infringement resulting from the use of documents, patterns, drawings or goods supplied by the Phi-Lab's Partners through the Phi-Lab - which may be made, or brought against the Phi-Lab's Partners, or to which the Phi-Lab's Partners may be put by reason of such infringement or alleged infringement.

13.3.2 The Phi-Lab shall notify the Contractor immediately of any written claim or notice of infringement of Third Party(ies)'s rights that it receives concerning this Contract.

13.3.3 The Contractor shall immediately take all necessary steps within its competence to prevent or end a dispute and shall assist the Phi-Lab's Partners to defend any such dispute, or make settlement in respect of any claim or notice of infringement or suit for infringement.

13.3.4 The Parties shall notify each other of any known Intellectual Property Rights connected with the use of documents, patterns, drawings and goods supplied by one Party to the other or connected with the execution of the specifications laid down by the other Party.

13.4 Compensation for Damage Caused to Goods and Property

Claims shall be settled as follows.

13.4.1 Claims for Direct Damages

(a) The Contractor shall indemnify the Phi-Lab and Phi-Lab's Partners against, and shall be liable for, direct damage to property and equipment to the extent that such damage is caused by the negligence of the Contractor and of its employees or agents;

(b) The Phi-Lab and the Phi-Lab's Partners shall indemnify the Contractor against, and shall be liable for, direct damage to the Contractor's property and equipment to the extent that such damage is caused by the negligence of the Phi-Lab, the Phi-Lab's Partners or of their employees (staff) or agents.

13.4.2 Claims for Indirect or Consequential Damages

(a) The Parties shall in no circumstances be liable for indirect or consequential damages such as loss of use, loss of business, loss of data, loss of rights, loss of services, loss of goodwill, Third Party claims to the extent that they represent the indirect loss of a Third Party, loss of revenues or anticipated savings, or for any indirect financial loss or indirect economic loss or for any indirect or consequential loss or damage whatsoever suffered by the other Party;

(b) The Parties shall in no circumstances be liable for loss of profit, whether direct or indirect.

13.5 Damages to Third Parties caused by the Contractor

The Phi-Lab shall in no circumstances be liable for any damage caused by the employees or agents of the Contractor to a Third Party during the performance of the Activity under this Contract.

ARTICLE 14 – CHANGES TO THIS CONTRACT

14.1 Introduction of a Change

14.1.1 For all changes to this Contract, whether requested by the Phi-Lab or initiated by the Contractor, the Contractor shall submit a proposal for a Contract Change Notice (“CCN”).

14.1.2 The Contractor shall ensure - in liaison with the Phi-Lab- that each CCN proposal is fully coordinated and that all reasonably foreseeable implications of the change have been considered by the Contractor and the Phi-Lab. The Contractor shall, on the request of the Phi-Lab, provide additional documentary evidence of the effect of the change to both Parties.

14.2 Approval or Rejection of the CCN Proposal

14.2.1 Should the CCN proposal be approved by the Phi-Lab, a corresponding CCN shall be prepared by the Phi-Lab’s representative for contractual matters identified in Article 8.3 b), and shall be submitted to both Parties for signature.

14.2.2 Should the CCN proposal be rejected for any reason by the Phi-Lab, the Contractor shall be informed accordingly, together with the reasons for the rejection. At the request of either Party, the change may be discussed at a Change Review Board, consisting of a contractual and a technical representative of each Party.

14.3 Implementation and Status of an approved CCN

Upon signature of the CCN by both Parties, the CCN will have immediate effect and will constitute a binding contractual agreement between the Parties. The CCN will serve as an applicable document to this Contract.

ARTICLE 15 – POST-SUPPORT REPORTING

On each anniversary of the end of the Contract Term, and for a duration of 5 years, the Contractor shall prepare and submit an Annual Performance Report to the representative for technical matters of the Phi-Lab, as specified in Article 8.3a), as well as to the Agency following the provisions of Appendix 1, section 4.1.4. Should the Contract not provide this information, the Contractor will lose the right to use the Phi-Lab location logo and Text Line.

ARTICLE 16 – TERMINATION

16.1 Right of Termination

16.1.1 Each Party reserves the right, after full consideration of all relevant circumstances and following a formal notification, to terminate this Contract in the event of a material breach of the Contract by the other Party.

16.1.2 In the event of such termination, the Contractor shall keep the amounts already paid for the milestones achieved, if any, and shall be entitled to claim costs, properly evidenced and submitted by the Contractor and accepted by the Phi-Lab.

16.1.3 The Phi-Lab shall in no circumstances be liable to pay any sum which deviates from the provisions set out in Article 6, and when added to the sums already paid, due or becoming due to the Contractor under this Contract by the Phi-Lab, exceeds the total price for the Activity set forth in this Contract.

16.1.4. In case of termination of the Contract, the provisions under Article 13 of this Contract shall not be affected.

16.1.5 Termination in special cases

The Phi-Lab may at any time terminate the Contract by giving written notice with immediate effect in any of the following events:

- a) if the Contractor becomes insolvent or if its financial position is such that within the framework of its national law, legal action leading towards bankruptcy may be taken against it by its creditors;
- b) if the Contractor resorts to fraudulent practices in connection with the Contract, especially by deceit concerning the nature, quality or quantity of the supplies, and the methods of processes of manufacture employed or by the giving or offering of gifts or remuneration for the purpose of bribery to any person in the employ of the Phi-Lab or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of the Contractor or otherwise.
- c) in the event of a material breach of contract or in case of the Contractor's failure to meet the technical requirements of the Contract or meet the progress and / or delivery requirements.

16.1.6 In case of Force Majeure and if the Force Majeure event and its consequences continue for more than two (2) months from the start date of the Force Majeure event, either Party may terminate the Contract by giving not less than one (1) month notice to the other Party.

16.1.7 In case of termination due to Force Majeure the amount to be paid shall be calculated as per Articles 16.1.2 and 16.1.3. No other payments or indemnities shall be due by the Phi-Lab to the Contractor.

16.2 Consequences of Termination

Any information, in documentary or other physical or electronic form, pertaining to the Activity, carried out by the Contractor during the Contract Term, remains the property of the Phi-Lab and shall be handed over to the Phi-Lab upon the expiry or termination of this Contract. This shall include:

- (a) any information and documentation under Article 2.1;
- (b) any equipment under Article 3.4;
- (c) any software under Article 2.2.1;
- (d) any hardware under Article 2.2.2.

The Contractor shall deliver to the Phi-Lab all documentation that was to be delivered for the Final Settlement in case the Contractor had completed the Activity in full (see Article 6.3).

The Contractor agrees to reimburse to the Phi-Lab any amount that would not have been found acceptable for the Final Settlement should the Contract have not been terminated before its envisaged Contract End Date.

ARTICLE 17 - ASSIGNATION OF THIS CONTRACT

The Contractor shall not assign its rights and/or transfer its obligations under this Contract in whole or in part to a Third Party ("assignee").

ARTICLE 18 - DISPUTE SETTLEMENT

18.1 This Contract shall be governed by the laws of Austria.

18.2 The Parties will consult with each other promptly when events occur, or matters arise that may pose a question of interpretation or implementation of the terms of this Contract.

The Parties shall use their best efforts to settle any dispute arising out of the Contract amicably.

Any issue of interpretation or implementation of this Contract that cannot be settled by the Parties' Representatives indicated in Article 8.3 shall be referred to arbitration.

18.3 Any dispute arising out of the interpretation or implementation of this Contract that cannot be settled as described in Article 18.2 above, at the request of either Party, shall be submitted to arbitration according to the Rules of Arbitration of the International Chamber of Commerce. The Arbitration Tribunal shall sit in A-2700, Wiener Neustadt and the arbitration proceedings shall be conducted in English, unless otherwise explicitly agreed between the Parties. The enforcement of the award shall be governed by the rules of procedure in force in Austria.

ARTICLE 19 - DATA PROTECTION

To the extent that is reasonably necessary, in connection with the Contractor's Activity under this Contract, and for legitimate purposes of processing only, the Contractor as data subject's personal data may be disclosed to employees (staff) and agents of Phi-Lab Austria, the relevant Phi-Lab Austria partners and ESA Partners, for any studies and/or reporting that may be carried out by the Agency and/or the Phi-Lab.

The Contractor hereby consents to the recording, processing, use and disclosure of its personal data as set out here above (including the recording, processing, use and disclosure of its personal data to the extent required by reason of the Contractor's performance of the Activity under this Contract), including the transmission of such data between the Phi-Lab Austria and other Phi-Labs for the fulfilment of the above requirements.

ARTICLE 20 – EXECUTION OF THE CONTRACT

The Parties agree that electronic signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.

In witness whereof, the Parties hereto have executed this Contract, with effect as of the signature of the Contract.

Electronically/Digitally signed by the Parties to this Contract,

In:.....

In:.....

Date:

Date:

For Phi-Lab Austria:

For [Contractor]:

.....
Mr/Ms [name]
[Title]

.....
Mr/Ms [name]
[Title]

APPENDIX 1 - STANDARD REQUIREMENTS FOR MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES

This document contains the standard requirements for management, reporting, meetings and deliverables for contracts to be placed by the Phi-Lab in regard to the Phi-Lab Austria.

1. MANAGEMENT

1.1 General

The Contractor shall implement effective and economical management for the work to be performed under this Contract. The nominated representative of the Contractor shall be responsible for the management and execution of the work to be performed.

1.2 Communications

All communications sent by the Contractor to the Phi-Lab shall be addressed to the representatives of the Phi-Lab nominated in Article 8.3 of this Contract.

2. REPORTING

2.1 Minutes of Meetings

The Contractor is responsible for the preparation and distribution of minutes of meetings held in connection with this Contract. Electronic versions of the minutes of each meeting shall be issued and distributed to all participants and to the representatives of the Phi-Lab, not later than ten (10) days after the meeting concerned was held.

2.2 Progress Reports

Every three (3) months, the Contractor shall provide a progress report to the representatives of the Phi-Lab, covering the Activity. This report shall provide details of:

- action items completed during the reporting period,
- description of progress: events accomplished etc.,
- problem areas, if any, and corrective actions planned and/or taken,
- events anticipated during the next reporting period,
- further details to be provided on a case-by-case basis.

2.3 Problem Notification

The Contractor shall notify the representatives of the Phi-Lab of any problem likely to significantly impact the progress of the Activity.

3. MEETINGS

3.1 Kick-off Meeting

The kick-off meeting shall take place at premises of the Phi-Lab or by teleconference at the beginning of the Contract Term.

3.2 Preliminary Review Meeting

In the case the Contract is longer than 1 year a Preliminary review meeting shall be held where the Contractor shall present the Preliminary Report to verify the status of the Activity and to validate its feasibility.

3.3 Mid-Term Review

At Mid Term, a meeting shall be held ("Mid Term Review"), where the Contractor shall present the Mid Term Report to verify the status of the Activity and to validate its feasibility.

3.4 Final Review Meeting

At the end of the Support, a Final Review shall be held. The Contractor shall provide a Final Report, an Executive Summary, a Business Plan, and perform a demonstration of the service/product developed.

3.5 Additional Meetings

Additional meetings may be requested either by the Phi-Lab or the Contractor.

3.6 Notice and Agenda for Meetings

For all meetings the Contractor shall ensure that proper notice to the Φ-Lab is given at least two (2) weeks in advance. The Contractor is responsible for ensuring the participation of the Contractor's personnel and/or Third-Party advisors, as needed.

For each meeting the Contractor shall propose an agenda in electronic form and shall compile and distribute handouts of any presentation given at the meeting.

4. DELIVERABLES

4.1 Documentation to be delivered

In addition to the documents to be delivered according to section 2 above, the documentation specified in this section shall also be a deliverable and shall be delivered as follows:

- in electronic form on computer readable media (e.g. PDF-format,) as agreed by the Φ-Lab,
- and in other exchange formats where relevant (e.g. HTML).

4.1.1 Preliminary Report (if due) and Mid Term Report

The Preliminary Report (if due) and Mid Term Report shall describe in detail the status of the technical and commercial progress in relation to the Activity. An analysis of the feasibility of the Activity shall also be presented. The report shall follow the template for the Preliminary/ Mid Term Report provided by the Φ-Lab.

All invoices related to the hardware as defined in Article 2.2.2 comma c of this Contract up to the time of the Mid Term Review of this Contract shall be attached to the Mid Term Report.

4.1.2 Final Report

The Final Report shall be a complete statement of all the work undertaken by the Contractor during the Contract Term. It shall not refer to any other report that may have been provided by the Contractor and shall detail the full results of the Activity to include:

- a) lessons learned;
- b) details of the support received from the Phi-Lab and/or any other support entity, including Partners of the Phi-Lab;
- c) contacts established;
- d) description of research results and technical developments, including photographs of hardware under development and test (when applicable);
- e) financial details;
- f) licences granted, patent filings and applications;
- g) deliverables to the ESA Phi-Lab.

The report shall follow the template for the Final Report provided by the Phi-Lab.

All invoices related to the hardware as defined in Article 2.2.2 comma c of this Contract that have not been delivered together with the Mid Term Report, shall be attached to the Final Report.

4.1.3 Executive Summary to the Final report

The Contractor shall prepare a summary which shall concisely summarise the findings of the Contractor in performing the Activity ("Executive Summary"). It shall be suitable for non-experts and should also be appropriate for publication, including on a web page. For this reason, it shall not contain any proprietary information.

The Executive Summary shall not exceed three (3) pages of text with coloured illustrations or photographs, if appropriate. It shall also be delivered to the Φ-Lab by the Contractor in HTML format.

4.1.4 Annual Performance Report

The Annual Performance Report shall follow the template provided by the Phi-Lab and shall describe, among others, the sales made and/or licences granted by the Contractor during the preceding twelve (12) months. The Contractor shall submit the Report to the Phi-Lab in electronic form on each anniversary of the end of the Contract Term, during 5 years.

The Annual Performance Report for a specific year may be replaced by a similar survey conducted by either the Phi-Lab or the Agency, when this takes place in a similar time frame.

4.1.5 Photographic, Video Documentation

Photographic and video documentation shall document (as relevant)

- progress of hardware manufacture
- test set-ups and tests carried out
- use of the product/service
- organised events where the Contractor has been showcasing the product/service.

They shall be suitable for dissemination and publicity purposes.

Photographic and video documentation shall not contain any proprietary information.

APPENDIX 2 – SERVICE AGREEMENT

- Individual Support from Phi-Lab Austria (no additional costs, Art.3), for request and planning see the Contractor's Proposal
- Free access to the Phi-Lab Austria support programme (no additional costs)
 - Workshops, Network Meetings, Key Speaker... more than 10 Events per year (wip),

APPENDIX 2b – WORKSPACES RENTAL AGREEMENT

- Two workstations in the co-working space Office Phi-Lab Austria during the Contact term (no additional costs)
- Discounted conditions if the SME/Start-up relocates permanently to Vienna Airport because of the project and thus makes a significant contribution to the establishment of the Competence Centre Phi-Lab Austria. The rent can be counted as eligible for funding during the term of the contract!
- The favored conditions and lease term are currently being negotiated

APPENDIX 3 – REPORTS AND DELIVERABLES TEMPLATES

This annex is a separate document, possibly also Annex 2a