

DRAFT ESA SPARK FUNDING CONTRACT v2.0

[Project acronym – project name]

Between:

Arribes Enlightmnt S.L.

(hereinafter called the “**Local Administrator** ”),

located at:

C/ Picasso, 19

28691 Madrid, Spain

acting at request of the European Space Agency as ESA Technology Broker Spain.

Represented by Mr. Luis Martín Bernardos, its Sole Administrator,

of the one part,

and:

.....,
(hereinafter called “.....”),

Whose Registered Office is at:

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

whose Trade Register Number in is:,
(hereinafter called the “**Contractor**”)

Represented by Mr/Ms [Name], its [Title/Position]

of the other part,

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

Commencement Date:

Contract 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 the Agency manages ESA Spark Funding Initiative to accelerate the product development process of a company as well as to hone the commercialisation roadmap which should result in an enhanced offer to its customers. The scope of ESA Spark Funding may be either **a company that is integrating non-space technology/assets into space domains/services** (spin-in), or **a company that is integrating space technology/assets into non-space domains/services** (spin-off). The ESA Spark Funding Initiative is implemented by a Local Administrator from the ESA Commercialisation Network (ESA Business Incubation Centre, ESA Technology Broker, ESA Business Applications Ambassador, or ESA Φ-labNet).
4. WHEREAS the Agency has chosen the Local Administrator to implement and manage the ESA TB Spain as well as ESA Spark Funding Spain.
5. WHEREAS the ESA TB Spain and ESA Spark Funding Spain are funded by the European Space Agency.

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 ESA Spark Funding Spain Initiative, including the preparation of the Mid Term Report (if applicable), Final Report, and all other obligations and deliverables to be provided by the Contractor as provided for in this Contract.

“Contractor for the ESA Spark Funding” (referred to as “Contractor”) means the entity that benefits from the ESA Spark Funding Spain Initiative, paid by the Local Administrator under this Contract.

“CCN” shall mean a contract change notice.

“Change Review Board” shall be a board consisting of a contractual and a technical representative of each Party established to discuss and agree upon the approval or rejection of a change proposal, and a final CCN.

“Commencement Date” shall mean the date that this Contract shall come into force, as set out in Article 4.

“Confidential Information” shall have the meaning set out in Article 9.2.

“Contract” shall mean an agreement between the Local Administrator and the Contractor regulating the Activity.

“Contract End Date” shall mean the date that this Contract shall come to an end, as set out in Article 4.

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

“Cost Report” shall mean a report detailing all costs incurred in relation to the Activity, to be submitted by the Contractor to the Local Administrator.

“Deliverables” shall have the meaning set out in Article 2.

“Disclosing Party” shall mean the Party disclosing Confidential Information.

“Final Report” shall mean the complete statement of the work undertaken by the Contractor during the Contract Term, as further defined Article 2.1.2.

“Force Majeure” shall mean 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.

“Intellectual Property Rights” (“IPR”) shall mean all rights in copyright, patents, know-how, Confidential Information, database rights, rights in trade-marks and designs (whether registered or not), applications for the registration of any of the foregoing and the right to apply for the registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

“Local Administrator” is the legal entity that has a contract with the European Space Agency to manage the ESA TB Spain and as part of its tasks implements and manages ESA Spark Funding Spain initiative.

“Local Administrator’s Partner(s)” shall mean an entity(ies) that is working together with the ESA TBSpain to support the activities of ESA Spark Funding.

“Mid Term” shall mean the midpoint date between the Commencement Date and the Contract End Date.

“Mid Term Report” shall have the meaning set out in Article 2.1.1.

“Receiving Party” shall mean the Party receiving Confidential Information.

“Third Party” shall mean any person or entity other than the Agency and the Parties to this Contract or their personnel.

“Third Party Services” shall have the meaning set out in Article 3.

ARTICLE 1 - SUBJECT OF THE CONTRACT, APPLICABLE DOCUMENTS

1.1 Subject of the Contract

The Contractor undertakes to perform the Activity “[Project Name]” during the Contract Term.

1.2 Applicable documents

The Activity shall be performed in accordance with the following applicable documents listed hereunder in order of precedence, in case of conflict:

- a) The present ESA Spark Funding Contract;
- b) The Standard Requirements for Management, Reporting, Meetings and Deliverables attached as Appendix 1 hereto;
- c) The Minutes of the negotiation meeting held on [REDACTED], ref. [REDACTED], dated [REDACTED], not attached hereto but known to both parties;
- d) The Contractor’s Proposal ref. [REDACTED], dated [REDACTED], Version [REDACTED], not attached hereto but known to both Parties.

The latest version of the Mid-Term Report and Final Report templates will be made available to the Contractor by the Local Administrator. The Parties agree that any change regarding these templates will not require a Contract Change Notice.

ARTICLE 2 – ACTIVITY OF THE CONTRACTOR; DELIVERABLES

The Contractor undertakes to deliver the items mentioned below (the “Deliverables”) to the Local Administrator, as part of the Activity in accordance with the following provisions:

2.1 Documentation

The Contractor shall deliver as part of the Activity the documents specified in this section in electronic searchable, indexed and not encrypted PDF and original (WORD) format.

2.1.1 Mid Term Report (for projects exceeding 12 months in duration)

At least two (2) weeks in advance of the Mid Term Review meeting, the Contractor shall deliver the “Mid Term Report”.

The key content of the Mid Term Report shall be presented by the Contractor to the Local Administrator at the Mid Term Review.

The final version of the Mid Term Report shall be issued not later than two (2) weeks after the Local Administrator’s approval of the draft version.

2.1.2 Final Report

At least two (2) weeks in advance of the Final Review meeting, the Contractor shall deliver the "Final Report".

The key content of the Final Report shall be presented by the Contractor to the Local Administrator at the Final Review.

The final version of the Final Report shall be issued not later than two (2) weeks after the Local Administrator's approval of the draft version.

2.1.3 Proof of Achievement Slide Deck

At least two (2) weeks in advance of the Final Review meeting, the Contractor shall deliver the "Proof of Achievement Slide Deck".

The final version of the Proof of Achievement Slide Deck shall be issued not later than two (2) weeks after the Local Administrator's approval of the draft version.

2.2 Other Deliverables

The Contractor shall deliver a proof of the hardware or software developed for the product or service to the Local Administrator.

The Local Administrator may then deliver to or share this with the Agency.

The Local Administrator and the Agency will use these deliverables for communication, dissemination and publicity purposes, and for verifying correct use of the ESA Spark Funding.

ARTICLE 3 - SERVICES TO BE PROVIDED BY THIRD PARTIES

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

For the purposes of this Article, it is hereby understood that the ESA Spark Funding shall be spent in Spain unless the product/service is not available in such territory and in the event that there is an international collaboration (e.g. Product Developer is located in Spain but the Technology Provider is located elsewhere). In any case, the amount of ESA Spark Funding spent outside of Spain shall not exceed 50% of the overall value of this contract.

The Contractor shall inform the Local Administrator about Spark Funding expenditures outside of Spain. Any expenditure exceeding allowed percentage shall be submitted for the Local Administrator's approval and accompanied with strong justification.

ARTICLE 4 - CONTRACT TERM

This Contract shall enter into force upon signature by the legal representatives of both Parties ("Commencement Date") and shall continue in force until the Contract End Date, unless it is

cancelled or otherwise terminated in accordance with Article 14. In no case shall the Contract Term exceed the duration of twenty four (24) months without prior approval from ESA.

ARTICLE 5 – FINANCIAL CONTRIBUTION AND PAYMENT

5.1. Financial Contribution

5.1.1 The total financial contribution under the ESA Spark Funding Spain to the Activity amounts to:

[OPTION- PHASE 1- Technical Breadboarding and Business Case]

[...] EUR ([...] EURO) to accelerate the definition of a minimal viable product/service and technical breadboard to validate critical functions and value proposition, as well as the refinement of an applicable business case.

[END OPTION – PHASE 1]

[OPTION-PHASE 2 – Demonstration Project with Customer/User]

[...] EUR ([...] EURO) to accelerate the definition of an elaborate prototype/service and demonstration of the major capabilities in relevant environment (for spin-off). For spin-in projects, a clear advance in e.g. complexity, system integration, testing envelope must be evident compared to an existing prior technical breadboard.

[END OPTION-PHASE 2]

5.1.2 For the purposes of this Contract the above mentioned total financial contribution is stated to be a ceiling price which shall not be exceeded and not constitute more than [80% for SME / 50% for large companies/ 100% for Universities and Research Institutes (with no commercial interest in product or service)] of the total project costs and for which the Contractor shall perform the Activity in full.

The Contractor undertakes to permit the Local Administrator and the Agency to perform cost control operations, at any time during the execution of the Contract, in order to ascertain whether the co-funding element is in place.

5.1.3 The above amount does not include any taxes and duties.

5.2 Payment Terms

(a) Payments shall be made within thirty (30) calendar days of receipt by the Local Administrator of the documents listed and fulfilment of the requirements as specified in the Payment Plan in Article 6.3 below.

(b) Progress payments shall not be considered as final payments. Progress payments will be deducted from the total price under this Contract.

(c) The Contractor shall use the Spark Funding only for the purposes specified in this Contract, unless a deviation has been specifically and formally agreed with the Local Administrator. In the event of any violation of this provision the Local Administrator reserves the right to require the return of the progress payments without prejudice to its rights under Article 14.

5.3 Categories of Payments

5.3.1 Progress Payment

The Local Administrator shall authorise progress payment in connection with this Contract and the Activity undertaken by the Contractor. The Contractor shall provide the Local Administrator with the supporting documentation that will justify the actual achievement of the milestone as defined in the Payment Plan specified in Article 5.4 below.

5.3.2 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 Local Administrator of the satisfactory completion of the Activity and acceptance by the Local Administrator of all related deliverables due under the Contract.

5.4 Payment Plan

The Local Administrator shall make the following payments to the Contractor:

[OPTION 1 - for projects of duration of 12 months or shorter]

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO	%
PROGRESS I: Upon delivery of a copy of written agreement between the Technology Provider and Product Developer.			50%
FINAL: Upon successful Final Review, acceptance by the Local Administrator of all deliverables due under the Contract and fulfilment of all contractual obligations by the Contractor under the Contract.			50%
TOTAL			100%

[END OPTION 1]

[OPTION 2– for projects exceeding 12 months]

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO	%
PROGRESS I: Upon delivery of a copy of written agreement between the Technology Provider and Product Developer.			50%
PROGRESS II: Upon successful Mid-Term Review and acceptance by the Local Administrator of all applicable deliverables.			25%
FINAL: Upon successful Final Review, acceptance by the Local Administrator of all deliverables due under the Contract and fulfilment of all contractual obligations by the Contractor under the Contract.			25%
TOTAL			100%

[END OPTION 2]

5.5 Payment implementation conditions

5.5.1 Payments shall be made by the Local Administrator 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 Local Administrator on time if the Local Administrator's orders of payment reach its bank within the payment period stipulated in Article 5.3.2 c) above.

5.5.2 Any special charges related to the execution of payments will be borne by the Contractor.

ARTICLE 6 - PARTIES REPRESENTATIVES AND COMMUNICATIONS

6.1 All correspondence affecting the terms and conditions of this Contract and concerning its execution shall be made in writing. All communications or correspondence between the Parties shall be in English.

6.2 All correspondence for either Party shall be sent to both representatives of each Party stated in Articles 6.3 and 6.4, i.e. depending on the subject, addressed to one representative of the Party with a copy to the other.

6.3 For the purpose of this Contract the representatives of the Local Administrator are:

(a) For technical matters:

Dr. Noelia Sánchez Ortiz

Tel.: +34 609 05 22 22

Email: noso@arrib.es

(b) For contractual and administrative matters:

Mr. Luis Antonio Martín Bernardos

Tel.: +34 609 15 46 86

Email: berkelio@arrib.es

All correspondence for the Local Administrator shall be addressed to:

ESA TB Spain

C/ Picasso, 19

28691 Madrid, Spain

6.4 For the purpose of this Contract the Contractor's representatives are:

(a) For technical matters:

Mr/Ms

Tel.:

Email:

(b) For contractual and administrative matters:

Mr/Ms

Tel.:

Email:

All correspondence for the Contractor shall be addressed to:

.....
.....
.....

ARTICLE 7 - PUBLICITY AND VISUAL IDENTITY OF CONTRACTORS

7.1 Publicity

7.1.1 The Contractor shall not produce or disseminate any form of communication material, press releases or other publicity documents, including the advertising and news bulletins, which are intended by the Contractor for the press, internet / web-sites or

television, which refer to ESA, the Local Administrator, or any aspect of the Local Administrator's ESA TB Spain activities, or permit any Third Party to do so, without the prior written consent of the Local Administrator

- 7.1.2 The Local Administrator shall not produce or disseminate any form of communication material, press releases or other publicity documents which are intended by the Local Administrator 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, without the prior written consent of the Contractor's representative for contractual matters or its duly authorised representative.

7.2 Visual Identity of the Contractor

- 7.2.1 The Contractor shall place the ESA TB Spain logo and 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 <https://esa-technology-broker.arrib.es> and it shall be clearly stated that the company is supported by ESA Spark Funding.

"[Project Name] executed by [Contractor Name] has been supported by the ESA TB Spain through the ESA Spark Funding initiative" is referred to as the Text Line to be used in connection with the ESA TB Spain logo.

Use of the ESA TB Spain logo and Text Line by the Contractor shall be subject to the following conditions:

- (a) the Contractor shall submit to the Local Administrator 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 Local Administrator.
- (b) the prior approval of the Local Administrator for the use of the ESA TB Spain 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 Local Administrator 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 ESA TB Spain logo and/or Text Line on substantially 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 Local Administrator;
- (e) no use of the ESA TB Spain logo nor 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 or the Local Administrator; and
- c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

7.2.2 The Contractor shall keep appropriate records of the extent of its use of the ESA TB Spain logo and Text Line, stating in particular the nature and time of use of the ESA TB Spain logo and Text Line on its material, products and documentation. The Contractor shall provide the Local Administrator with information and documents to evidence such use.

7.2.3 The use by the Contractor of the ESA TB Spain logo and Text Line may continue beyond the successful closure of the contract subject to the Contractor reporting its usage on a yearly basis to the Local Administrator. The Local Administrator and the Agency may withdraw the right to use the text line at any time for any reason.

7.2.4 Unless otherwise stated in this Article, the Contractor shall not use the official emblem of ESA, the ESA TB Spain, the Local Administrator, or any other logo or trademark which may be owned or used by the Agency or the Local Administrator for any purpose whatsoever.

ARTICLE 8– 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 at: <https://esastar-publication.sso.esa.int/supportingDocumentation>

ARTICLE 9 - CONFIDENTIALITY

9.1 Each Party shall observe complete discretion with regard to 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.

9.2 Neither Party shall disclose any documentation, information or materials obtained from the other Party, whether marked (by way of example as, "confidential" or "proprietary information") or unmarked ("Confidential 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.

9.3 Each Party may disclose Confidential Information on a strictly "need to know" basis to:

- its employees;
- its professional agents;
- Local Administrator's Partners

as long as they have signed an engagement of confidentiality.

- 9.4 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 9.2 shall apply,
- 9.5 On the Contract End Date, or upon the earlier termination of this Contract in accordance with Article 14, 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 Local Administrator.
- 9.6 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 *in 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 evidenced 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.
- 9.7 The contents of this Contract are Proprietary Information.
- 9.8 The obligations set out in this Article shall survive the termination or expiry of this Contract.

ARTICLE 10 – INTELLECTUAL PROPERTY RIGHTS

10.1 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.

10.2 Use of Intellectual Property Rights by the Agency

- 10.2.1 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:

- 10.2.1.1 the use is strictly for the Agency's Own Requirements, in particular making 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,
- 10.2.1.2 for public dissemination, in particular, 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.

- 10.2.2 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 10.2.1 only for the information, communication and publicity activity of the Agency, if needed.
- 10.2.3 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.
- 10.2.4 When transferring any Intellectual Property Rights, of which the Contractor retains the ownership in accordance with Article 10.1, to an assignee, the Contractor shall ensure that the Agency's rights, as set out in Article 10.2 of this Contract, are reassigned to the new assignee.

10.3 Transfer of Intellectual Property Rights outside the ESA Member States

The Contractor shall inform the representatives of the Local Administrator well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from the Activity performed under this Contract.

ARTICLE 11 – LIABILITY

11.1 Limitations of Liability

11.1.1 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 9 and 10 of this Contract.

11.1.2 Subject to Article 11.1.1, 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 the Contract price, per event or series of connected events.

11.2 Infringements of the Law

11.2.1 The Local Administrator 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 Spain or in any other Country whatsoever.

11.2.2 The Contractor shall indemnify the Local Administrator from and against all claims, proceedings, damages, costs and expenses arising out of any infringement of the Contractor's obligations under this Contract.

11.3 Infringement of the Rights of the Local Administrator's Partners

11.3.1 The Contractor shall indemnify the Local Administrator'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 Local Administrator's Partners through the Local Administrator which may be made, or brought against the Local Administrator's Partners, or to which the Local Administrator's Partners may be put by reason of such infringement or alleged infringement.

11.3.2 The Local Administrator 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.

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

11.3.4 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.

11.4 Compensation for Damage Caused to Goods and Property

Claims shall be settled as follows:

11.4.1 Claims for Direct Damages

- (a) The Contractor shall indemnify the Local Administrator against, and shall be personally responsible for, direct damage to property and equipment to the extent that such damage is caused by the negligence of the Contractor and its employees or agents;
- (b) The Local Administrator shall indemnify the Contractor against, and shall be personally responsible for, direct damage to the Contractor's property and equipment to the extent that such damage is caused by the negligence of the Local Administrator or their employees (staff) or agents.

11.4.2 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 of the other Party.

11.5 Damages to Third Parties caused by the Contractor

The Local Administrator shall not be liable for any damage caused by the Contractor and/or its employees or agents to a Third Party during the performance of the Activity under this Contract.

11.6 Delay in Delivery due to Force Majeure

In the event of an alleged delay in delivery due to Force Majeure, the Contractor shall report to the Local Administrator the Force Majeure event and its immediate consequences within one (1) week after its occurrence. The Contractor shall bear the burden of proof for the existence, duration, and consequences of Force Majeure, such proof to be provided within one (1) month from the occurrence of the Force Majeure event.

In case of Force Majeure, the Contractor shall not be considered at default and its obligations under the Contract shall be suspended during the Force Majeure event. The Contractor shall make reasonable efforts to mitigate the impact on the schedule and the performance of its contractual obligations.

In case of Force Majeure, an extension of the time-limit for execution or a postponement of delivery dates shall be granted in writing by the Local Administrator.

ARTICLE 12 – CHANGES TO THIS CONTRACT

12.1 Introduction of a Change

12.1.1 For all changes to this Contract, whether requested by the Local Administrator or initiated by the Contractor, the Contractor shall submit a proposal for a Contract Change Notice (“**CCN**”).

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

12.2 Approval or Rejection of the CCN Proposal

12.2.1 Should the CCN proposal be approved by the Local Administrator, a corresponding CCN shall be prepared by the Local Administrator's contractual representative as stated in Article 6.3 b) and submitted to both Parties for signature.

12.2.2 Should the CCN proposal be rejected for any reason by the Local Administrator, 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.

12.3 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 13 – POST CONTRACT REPORTING

On each anniversary of the end of the Contract Term, for 5 years, subject to losing the right to use the ESA TB Spain logo or Text Line if non-compliant, the Contractor shall respond to Annual Performance Survey sent by the Local Administrator or by the Agency, as specified in Article 7.2.3, as well as to the Agency following the provisions of Appendix 1, section 4.4.

ARTICLE 14 – TERMINATION

14.1 Right of Termination

14.1.1 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.

14.1.2 In the event of such termination, the Contractor shall keep the amounts already paid for achieved milestones, if any, and shall be entitled to claim the cost, properly evidenced, submitted by the Contractor and accepted by the Local Administrator.

14.1.3 The Local Administrator shall in no circumstances be liable to pay any sum which deviates from the provisions set out in Article 5 above, and when added to the sums already paid, due or becoming due to the Contractor under this Contract by the Local Administrator, exceeds the total price for the Activity set forth in this Contract.

14.1.4. In case of termination of the Contract, the provisions under Article 11 of this Contract shall not be affected.

14.1.5 Termination in special cases

The Local Administrator 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 Local Administrator or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of the Contractor or otherwise.

14.1.6 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.

14.1.7 In case of termination due to Force Majeure the amount to be paid shall be calculated as per Article 14.1.2 and 14.1.3 above. No other payments or indemnities shall be due by the Local Administrator to the Contractor.

14.2 Consequences of Termination

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

- (a) any information and documentation under Article 2.1;
- (b) any deliverables under Appendix 1, Article 2.

The Contractor shall deliver to the Local Administrator all documentation that was to be delivered in case the Contractor had completed the Activity in full (see Article 6.3.2).

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

ARTICLE 15 - 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 16 – APPLICABLE LAW; DISPUTE SETTLEMENT

16.1 This Contract shall be governed by the laws of Spain.

16.2 The Parties will consult with each other promptly when events occur or matters arise that may occasion 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 6.3 and 6.4 shall be referred to arbitration.

- 16.3 Any dispute arising out of the interpretation or implementation of this Contract that cannot be settled as described in Article 16.2 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 Madrid, Spain and the arbitration proceedings shall be conducted in English, unless otherwise agreed between the Parties. The enforcement of the award shall be governed by the rules of procedure in force Spain.

ARTICLE 17 - 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 the Local Administrator, the relevant Local Administrator's Partners, and ESA partners, for any studies and/or reporting that may be carried out by the Agency and/or the Local Administrator.

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 Local Administrator and other Local Administrators contracted by ESA for the fulfilment of the above requirements.

ARTICLE 18 – EXECUTION OF THE CONTRACT

[OPTION 1 or 2 below to be selected by the Contractor.]

N.B. Electronic signature encompasses both simple electronic signature (handwritten scanned) and the use of e-signing digital tools.]

[OPTION 1: electronic signature using digital signatures only, both Parties to sign using e-signing digital tools.]

The Parties agree that digital 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.

[END OPTION 1]

[OPTION 2: electronic signature. Each of the Parties can use either e-signing digital tools or simple electronic signature (handwritten scanned).]

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.

[END OPTION 2]

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,

For Arribes Enlightenment S.L.

For [Contractor]:

In: 

In: 

Date: 

Date: 

Signature
Name and title

Signature
Name and title

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

This document contains the standard requirements for management, reporting, meetings and deliverables with regard to ESA Spark Funding Spain.

1. MANAGEMENT

1.1 General

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

1.2 Communications

All communications sent by the Contractor to the Local Administrator shall be addressed to the representatives nominated in Article 6.3 of this Contract.

2. REPORTING

2.1 Minutes of Meetings

The Contractor shall be 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, including the representatives of the Local Administrator, not later than ten (10) days after the meeting concerned.

The minutes shall clearly identify all agreements made and actions accepted at the meeting together with an update of the Action Item List (AIL), if any. The minutes shall be signed.

2.2 Problem Notification

The Contractor shall notify the Local Administrator's representatives of any problem likely to significantly impact the progress of the Activity.

3. MEETINGS

For all meetings, the Local Administrator reserves the right to invite the Agency and the Spain National Delegation to participate.

3.1 Kick-off Meeting

The kick-off meeting shall take place at the Local Administrator's premises or by videoconference at the beginning of the Contract Term.

3.2 [OPTION: In case the Activity lasts longer than 12 months. 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 confirm its feasibility.

[END OPTION]

3.3 Final Review

At the end of the Activity a Final Review Meeting shall be held. The Contractor shall present the Final Report and all Deliverables, to verify the completion of the Activity.

3.4 Additional Meetings

Additional meetings may be requested either by the Local Administrator or the Contractor.

3.5 Notice and Agenda for Meetings

For all meetings the Contractor shall ensure that proper notice to the Local Administrator is given at least two (2) weeks in advance of when the Local Administrator's participation is required. The Contractor is responsible for ensuring the participation of its 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

In addition to the documents to be delivered according to section 2 above, the documentation set out in the present section shall also be deliverables.

All documentation deliverables mentioned in this section (including all their constituent parts) shall be delivered as follows:

- in electronic searchable form on computer readable media (e.g. PDF-format, and original in WORD, Excel, etc.) as agreed by the Local Administrator and in other exchange formats where relevant (e.g. HTML).
- The draft version of the documentation shall be sent to the Local Administrator representatives in electronic form for approval not later than two (2) weeks before the documentation is to be presented.

4.1 D1 – Proof of Achievement (Slide Deck and Demonstration Item)

4.1.1 Slide Deck

The Contractor shall deliver a Slide Deck in ppt-Format to the Local Administrator. The slide deck is composed of two slides covering the following elements:

- The heritage technology (with meaningful, high-definition, illustrative images/tables/diagrams);

- The new application (with meaningful, high-definition, illustrative images/tables/diagrams);
- Achievements, outcomes of the activity and next steps (with meaningful, high-definition, illustrative images/tables/diagrams);

4.1.2 Demonstration Item

The Contractor shall deliver proof of the hardware or software developed for the product or service. This shall be delivered to the Local Administrator. This can manifest in an item such as:

- A prototype or demonstrator;
- A suitable mock-up or breadboard showcasing the use/functionalities and application;
- A high-definition video showcasing the use/functionalities and application, including live demonstration;
- Other demonstrations items may be proposed but are subject to approval prior to contract signature.

4.2 D2 - Final Data Package

4.2.1 Mid Term Report (for projects of duration longer than 12 months)

The 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 Mid Term Report provided by the Local Administrator.

4.2.2 Final Report

The Final Report shall be a complete statement of all the work undertaken by the Contractor during the Activity. The report shall follow the template for the Final Report provided by the Local Administrator.

A Commercialisation Roadmap should also be provided as part of the Final Report. The depth of this will vary between Phase 1 and Phase 2 projects due to the difference in the anticipated level of maturity.

Phase 1 Projects: (suggested section length: 10 pages)

- Presentation and validation of stakeholder/customer requirements and market needs;
- Presentation and validation of stakeholder/customer feedback with regards to the intended value proposition and unique selling points;
- Presentation of market assessment, including quantification of market size, segmentation, and competition;
- Presentation of market penetration strategy, including key financial projections for break-even (i.e. sales, CAPEX, OPEX) over the next 5 years;
- Conclusion on the viability of the intended product/service with indication of critical success factors

- Conclusion and specific outlook of the next steps and milestones to reach market entry.

Phase 2 Projects (in addition to the above points, with a suggested length of 5 pages):

- Key takeaways and lessons learned through the demonstration plan and testing;
- Customer/user feedback based on the demonstration plan and testing;
- Presentation of a dedicated Risk and Mitigation Plan, discussing:
 - Product Roadmap (further product development, verification, validation, certification),
 - Market entry barriers,
 - Intellectual Property Rights strategy.

4.3 D3 – Technology Commercial Agreement Document

The Contractor shall deliver a document that outlines the commercial agreement between the Technology Provider and Product Developer. This shall include the following information:

- Details regarding the type of commercial agreement that has been agreed between the Technology Provider and Product Developer
- Duration of the agreement
- Conditions of agreement
- (Expected) Value of agreement.

4.4 D4 – Post Contract Reporting

On each anniversary of the end of the Contract Term, for 5 years, subject to losing the right to use the ESA TB Spain logo or Text Line if non-compliant, the Contractor shall respond to Annual Performance Survey sent by the Local Administrator or by the Agency.

4.5 Photographic 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.