

Technology Transfer – PROOF OF CONCEPT Contract

Between:

Verhaert New Products & Services

Hogenakkerhoekstraat 21

B-9150 Kruibeke

hereinafter referred to as Verhaert New Products & Services located at Kruibeke, Belgium
represented by Frederik Wouters

and

[Name company] with legal personality having its administrative offices at [location], [VAT-
number], duly represented by [project lead], who entrusts the execution of the present
agreement to [Person X]

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

PREAMBLE

1. WHEREAS VERHAERT NEW PRODUCTS & SERVICES is a company based in Belgium which acts as a broker of the European Space Agency in the field of technology transfer from space and leads the coordination of the ESA Technology Transfer Initiative Brokers' Network;
2. WHEREAS the European Space Agency currently undertakes an initiative to encourage, by means of technology transfer and incubation, the utilization of space technology for general non-space industrial, scientific and commercial uses;
3. WHEREAS Verhaert New Products & Services has been appointed by the European Space Agency to set-up, administer and implement an Open Call for Technology Transfer Proof of Concept in Belgium,
4. WHEREAS this Call allows both space and non-space organizations to submit a proposal, which may serve as a subject for this contract for transfer Proof of Concept in order to determine and eliminate any technical risk particular to the new terrestrial application,
5. WHEREAS [Company] has submitted such research proposal which has been approved for funding by VERHAERT NEW PRODUCTS & SERVICES

In Consideration of the mutual covenants contained in this Contract,

the following has been agreed:

ARTICLE 1: DEFINITIONS, SCOPE, BASELINE AND FUNDING

1.1 DEFINITIONS

“ACTIVITY” shall mean carrying out the Proof of Concept-project based on the proposal submitted to and approved for funding by VERHAERT NEW PRODUCTS & SERVICES

“AGENCY” shall mean the European Space Agency.

“BACKGROUND” shall mean: information, techniques, know-how, software and materials regardless of the form or medium in which they are disclosed or stored – including any relevant intellectual property rights - that are provided by one party to the other for use in the project whether before or after the start date of this Contract;

“CONFIDENTIAL INFORMATION” shall mean any proprietary information, documentation or data of personal or technical nature, including but not limited to any ideas, know-how, concept, designs, drawings and specifications, whether in written, electronic, photographic and/or other forms disclosed by the Disclosing Party to the Receiving Party and identified in writing as confidential before or at the time of disclosure, or the confidential nature of which was confirmed by the disclosing party in writing within ten calendar days counting from the date of its disclosure

“CONTRACT” shall mean the present contract.

“CONTRACT TERM” shall be the period between the commencement date [start date] and the date of termination of the contract [termination of the contract]

“DELIVERABLES” shall have the meaning set out in Article 3.2.

“DISCLOSING PARTY” shall mean the Party disclosing Confidential Information.

“EXECUTIVE SUMMARY” shall concisely summarize the findings of the Proof of Concept project. It shall not contain any Confidential Information. The Executive Summary shall not exceed one (1) page of text with colored illustrations or photographs, if appropriate.

“INTELLECTUAL PROPERTY RIGHTS” shall mean all registered intellectual property rights and unregistered intellectual property rights granted by law including all patents, trademarks, copyrights, design rights, database rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world.

“MIDTERM PROGRESS REPORT” shall mean a report detailing the work carried out by the Contractor as part of the Activity in the first half of the Proof of Concept.

“OPEN CALL” or “THE CALL” shall mean the instrument by which proposals for technology transfer Proof of Concept are submitted to VERHAERT NEW PRODUCTS & SERVICES.

“RESULTS” shall mean the deliverables, know-how, materials and information first reduced to practice or writing in the course of the project, as reported to Verhaert;

“RECEIVING PARTY” shall mean the Party receiving Confidential Information.

“THIRD PARTY” shall mean any person or entity other than the Parties to this Contract or their personnel as well as the Agency and the Originator.

1.2 SCOPE

The scope of this Contract sets forth the terms and conditions governing the relationship and the undertakings of the Parties with regard to the Activity.

1.3 BASELINE

The Parties shall perform their undertakings for the Activity in accordance with the following documents listed in order of precedence:

- *The present Contract;*
- *The Minutes of contract negotiation and kick-off meetings, not attached hereto but know to both Parties;*

- The Contractor's proposal ref number of the proposal + abstract

ARTICLE 2: PRICE

2.1 PRICE OF THE CONTRACT

As consideration for the execution of the Activity by [Company], the financial compensation paid by VERHAERT NEW PRODUCTS & SERVICES to [Company] shall be:

€ 38.000 (Thirty eight thousands EURO).

2.2 TYPE OF PRICE

The price type of the present Contract is stated to be of a firm fixed type, i.e. it is not subject to any price adjustment or revision by reason of the actual costs incurred by the Contractor in the performance of the Contract.

2.3 PAYMENT PLAN

2.3.1 VERHAERT NEW PRODUCTS & SERVICES may authorize the payment of an advance payment in connection with this Contract.

2.3.2 Advance payments are not final payments and shall be deducted from the sums due to [Company] under this Contract.

2.3.3 The applicant shall be allowed to claim final settlement when all their obligations under this Contract have been fulfilled. The final payment is due by VERHAERT NEW PRODUCTS & SERVICES upon:

- (a) receipt by VERHAERT NEW PRODUCTS & SERVICES of the relevant invoice(s) from the Contractor; and
- (b) certification by VERHAERT NEW PRODUCTS & SERVICES of the satisfactory completion of the Activity under this Contract.

2.3.4 Unless otherwise provided for in this Contract, a period of 30 (thirty) days shall be granted to VERHAERT NEW PRODUCTS & SERVICES for the execution of the final payment.

2.3.5 VERHAERT NEW PRODUCTS & SERVICES shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT IN EURO
MIDTERM PAYMENT: upon acceptance by VERHAERT NEW PRODUCTS & SERVICES of the midterm report and cost reporting deliverable under this contract.	[Date]	<u>19.000 (50%)</u>
FINAL PAYMENT: upon acceptance by VERHAERT NEW PRODUCTS & SERVICES of all deliverable documentations under this contract.	[Date]	<u>19.000 (50%)</u>

ARTICLE 3: OBLIGATIONS AND DELIVERABLES OF THE CONTRACTOR

3.1 OBLIGATIONS

The Contractor shall carry out the Transfer Proof of Concept project. The Transfer Proof of Concept project shall cover at least all items exposed in the Contractor's proposal on the basis of which the Contractor was selected through the Open Call.

3.2 DELIVERABLES

The Contractor shall deliver the items mentioned below, as part of the Activity in accordance to the following provisions.

3.2.1 Midterm progress report

At the halfway point through the contract term a midterm progress report shall be submitted electronically to VERHAERT NEW PRODUCTS & SERVICES. This will contain an overview of the technical progress made, as well as a cost report, proven with related invoices.

3.2.2 Proof of Concept final report and Executive Summary

A draft version of the Transfer Proof of Concept and Executive Summary carried out under the Activity shall be submitted electronically to VERHAERT NEW PRODUCTS & SERVICES 15 (fifteen) days prior to the Contract Term.

At the Contract Term, the Applicant shall deliver to VERHAERT NEW PRODUCTS & SERVICES the Transfer Proof of Concept report as well as the Executive Summary in electronic version (.doc and .pdf) and 3 (three) paper originals.

The final progress report shall be submitted electronically to VERHAERT NEW PRODUCTS & SERVICES. This will contain an overview of the technical progress made, as well as a cost report, proven with related invoices.

A final presentation will be organized together with the technical officer from ESA.

3.3 MEETINGS

The Contractor may be required to attend a Final Review meeting to be held at ESA/ESTEC or an alternative location in the ESA Member States.

ARTICLE 4: COMMUNICATIONS AND KEY PERSONNEL

4.1 COMMUNICATIONS

4.1.1 *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.*

4.1.2 *All correspondence for either Party shall be sent to the representative of each Party indicated in Articles 4.3 and 4.4.*

4.1.3 *For the purpose of this Contract VERHAERT NEW PRODUCTS & SERVICES's representatives are:*

(a) *For technical matters:*

Ma. Luisa Leroy

E-mail: Luisa.leroy@verhaert.com

Mr. Sam Waes

E-mail: Sam Waes@verhaert.com

Tel.: 32 3 780 70 25

Tel.: +32 4 98 33 09 89

or a person duly authorized by him/her.

(b) *For administrative matters:*

Ma. Thoen Veerle

E-mail: veerle.thoen@verhaert.com

Tel.: +32 3 250 19 00

Fax.: +32 3 254 10 04

or a person duly authorized by him/her.

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

(a) For technical matters:

[Name]

E-mail: [XXX]

Tel.: [XXX]

or a person duly authorized by him/her.

[Name]

(b) For administrative matters:

E-mail: [XXX]

Tel.: [XXX]

or a person duly authorized by him/her.

4.2 KEY PERSONNEL

4.2.1 The work shall be executed by the key personnel nominated in the Contractor's proposal.

4.2.2 Any replacement to other tasks of such key personnel, to the extent that they are not available as foreseen in the Applicant's proposal, requires the prior written approval of the VERHAERT NEW PRODUCTS & SERVICES representative as mentioned in Article 4.1. Appropriate requests shall be accompanied by a justification for the proposed change and by a comprehensive CV of the new key personnel proposed.

ARTICLE 5: LIABILITY

5.1 LIMITATION OF LIABILITY

- 5.1.1 *If a party infringes any laws or bylaws in force in Belgium or in any other country whatsoever, the other party shall not be held responsible for it.*
- 5.1.2 *Each Party shall indemnify the other Party from and against all claims, damages, costs and expenses arising out of any infringement of either Party's obligations under this Contract.*
- 5.1.3 *Subject to Article 5.2.3, the liability of one Party towards the other under or in connection with this Contract whether arising from negligence, breach of contract or any other obligation or duty shall not exceed the amount of the Fee set forth in Article 2 above.*
- 5.2 *INDIRECT OR CONSEQUENTIAL DAMAGES*
- 5.2.1 *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.*
- 5.2.2 *The Parties shall in no circumstances be liable for loss of profit, whether direct or indirect.*
- 5.2.3 *Neither Party excludes its liability to the other Party for:*
- (a) death or personal injury caused by its negligence or that of its employees or agents;*
 - (b) fraud, including fraudulent misrepresentations; and*

- (c) *liability under Article 6.*
- (d) *Gross-negligence, willful misconduct*

ARTICLE 6: CONFIDENTIALITY, USE OF INFORMATION AND PUBLICITY

6.1 CONFIDENTIALITY AND USE OF INFORMATION

6.1.1 *The contents of this Contract constitute Confidential Information.*

6.1.2 *Neither Party shall during the Contract Term and for a period of three years thereafter, disclose to any Third Party except the Agency, nor use for any purpose except the carrying out of the Activity, any of the other Party's Confidential Information*

6.1.3 *Upon the end of the Contract Term, or [earlier termination or cancellation] of this Contract in accordance with Article 9, the receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Confidential Information, both parties are allowed to keep 1 digital copy for legal purposes*

6.2 PUBLICITY

6.2.1 *Subject to clause 6.2.2, for the purpose of this Contract, the applicant shall not produce or disseminate any form of communication material, press releases or other publicity documents, including the Applicant's advertising and news bulletins, which refer to the Activity under this Contract, VERHAERT NEW PRODUCTS & SERVICES or/and the Agency or any aspect of their activities, or permit any Third Party to do so, without the prior written consent of VERHAERT NEW PRODUCTS & SERVICES or/and the Agency's contractual representative or their duly authorized representative.*

6.2.2. *For the duration of the confidentiality obligations as stipulated in Section 6.1.2, [Company] shall submit a draft of any proposed publication concerning the Activity in*

writing to VERHAERT at least thirty calendar days before the date of the proposed (submission for) publication. VERHAERT can, by giving written notice to [Company] (a “Confidentiality Notice”):

(a) prevent the publication of its Confidential Information; or

(b) delay the proposed publication for a maximum of four months after the date of receipt of the Confidentiality Notice if, in its reasonable opinion, such delay is necessary in order to seek patent or similar protection for any of its Background or any Results which are the subject of the intended publication; or

(c) prevent the publication of specific Results where such publication would cause disproportional harm to its legitimate interests

6.2.3.A Confidentiality Notice must contain a precise and motivated request for necessary adaptations to the intended publication. If such objection has been raised, the parties will discuss how to overcome the justified grounds for the objection on a timely basis (for example by adapting the planned publication and/or by protecting Background or Results before publication). The opposition to the intended Publication will not be unreasonably continued if appropriate actions have been taken following the discussion. Confidentiality Notices must be sent within fifteen calendar days after receipt of the draft Publication. The publishing party shall have the right to proceed with the proposed publication if it has not received a Confidentiality Notice within that fifteen calendar day period.

6.2.4 The applicant shall not use the logo of VERHAERT NEW PRODUCTS & SERVICES or/and the official emblem of the Agency or any other logo or trademark they may own without the prior written consent of VERHAERT NEW PRODUCTS & SERVICES or/and the Agency’s contractual representative or his duly authorized representative.

ARTICLE 7: INTELLECTUAL PROPERTY

7.1 OWNERSHIP

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 occurs.

7.2 USE OF INTELLECTUAL PROPERTY RIGHTS BY THE AGENCY

If the Agency or its Member States require the use of any Intellectual Property Rights, owned by the Contractor as described in Article 7.1, for the performance of the Agency's programmes, the Contractor shall be invited to submit a proposal following a request for quotation issued by the Agency.

If, for any reason, the Contractor is not able to submit a proposal within the determined tendering period, or following evaluation, said proposal is not recommended in-line with the ESA Rules and Regulations, the Agency is automatically entitled to a worldwide, irrevocable, transferable, non-exclusive license to use on "favorable conditions" (i.e. more favorable for the Licensee than market conditions but still allowing reasonable profit for the Licensor) such Intellectual Property Rights for non-commercial purposes within its Scientific Research and Research and Development programmes, with the right to grant sub-licenses.

Notwithstanding the above provisions of this Sub-Clause, shall the Contractor provide the Agency with conclusive evidence that granting said license would cause it to suffer economic hardship, the Agency's authorized representatives may jointly, on a case by case basis, waive this right.

7.3 *When transferring any Intellectual Property Rights, of which the Contractor retains the ownership in accordance with Article 7.1, to an assignee, the Contractor shall ensure that the assignee grants the Agency and its Member States' the same rights, as set out in Article 7.2 of this contract.*

7.4 *Transfer of Intellectual Property Rights outside the ESA Member States;*

The Contractor shall inform the Verhaert New Products & Services' technical representative, as stated in Article 4.1.3. well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from this Contract.

ARTICLE 8: APPLICABLE LAW AND DISPUTE SETTLEMENT

8.1 APPLICABLE LAW

This Contract shall be governed by the laws of Belgium.

8.2 ARBITRATION / DISPUTE SETTLEMENT

The courts of the judicial district of East Flanders, department [Company] will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Contract, except that either Party may bring proceedings for an injunction in any jurisdiction.

ARTICLE 9: ENTRY INTO FORCE, TERMINATION AND MODIFICATIONS

9.1 ENTRY INTO FORCE

This Contract shall enter into force upon signature by the legal representatives of both Parties and shall continue in force until [Contract Term] (Contract Term)", unless it is cancelled or otherwise terminated in accordance with Article 9.2.

9.2 TERMINATION

9.2.1 Each Party reserves the right to terminate this Contract, with immediate effect, in the event that the other Party fails to fulfil its undertakings under this Contract.

9.2.2 In no event shall termination of this Contract imply any payment or reimbursement of the cost incurred by either Party prior to termination, nor of any damages.

Termination of this Contract shall not affect the Parties' continuing rights and obligations under this Contract, Article 6 (Confidentiality, Use of Information and Publicity) in particular.

9.3 MODIFICATIONS

At the request of either Party, the modalities outlined in this Contract may be modified in writing by mutual consent. Such modification shall enter into force and have immediate effect at the date of signature by the legal representatives of both Parties.

Done in two originals, one for each party of this contract,

*In: Kruiseke, Belgium
On:*

*In:
On:*

*For
Name
Function
Signature*

*For.....
Name.....
Function.....
Signature.....*

For approval, [name and signature]