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| [\_\_\_\_] This model agreement has been drafted on the assumption that a research institution is the contractor and that the industrial partner is the customer: the highlighted text blocks reflect this assumption[\_\_\_\_] parts to be edited and/or references to be checked[\_\_\_\_] alternative clauses of industrial partners [\_\_\_\_] alternative clauses of research institutions(\_\_\_\_) help function for input fields, options and alternativesAGREEMENT ON USE OF ANONYMOUS DATAentered into by and between\_\_\_\_\_\_\_\_\_\_\_\_\_(Research Institution)represented by \_\_\_\_\_\_\_\_\_\_\_(name)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)(hereinafter referred to as "Research Institution")and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name, company name)a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Business Register Number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court), registered office in \_\_\_\_\_\_\_\_\_\_(town or city)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)(hereinafter referred to as the "Customer")either of them hereinafter referred to as a "Party" and together as the "Parties"Nouns are to be understood as gender neutral. The male form is used for reasons of convenience only. |

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| 1. DEFINITIONS
	1. "Trade and Business Secret" means information which is (i) secret because it is not generally known to or easily accessible for persons who normally deal with this kind of information, neither in its entirety nor in the exact arrangement or composition of its parts; (ii) of commercial value because it is secret, and (iii) the subject matter of reasonable secrecy measures that are appropriate under the given circumstances and taken by the person who is the lawful controller of such information [and (iv) marked as such by the Party providing the same, e.g. as "secret" or similar].
	2. "Change Procedure" means a procedure for changing the Performance Target.
	3. "Third Parties" means all legal entities or natural persons, except for the Parties and their employees.
	4. "Escalation" means to refer the issue to the next higher level in the hierarchy.
	5. "Performance Target" means services to be provided by the Research Institution on the basis of this Agreement, in particular as defined in Annex 2.3.
	6. "Written Form" or "In Writing" means the simple form of a handwritten personal signature. [According to the second set of eyes principle that is applied by the Research Institution the signatures of two authorised representatives of the Research Institution are required in any case.] The time at which the document is received or available for retrieval by the recipient is decisive for its legal effect.
	7. "Proprietary Rights" means intellectual property rights, including, without limitation, those under the laws regulating copyrights, patents, registered designs and/or marks, in particular trademark rights.
	8. "Subcontractor(s)" means all contractors (in the broadest sense of the word) used by the Research Institution or a subcontractor of the Research Institution to achieve the Performance Target, irrespective of whether they are suppliers, contractors for work, or service providers. Therefore, the term includes all entrepreneurs of the "subcontractor chain".
	9. "Expert Audit" means a dispute resolution process with an expert being called in as regulated in Clause 9.5, to avoid legal proceedings.
	10. "Signing Date" means the day on which this Agreement is signed by the Customer and the Research Institution.
	11. "Affiliate(s)" means [business entities which according to the provisions on full consolidation of the annual financial statements of affiliated entities (full consolidation) pursuant to [Section 244 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*]](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40109006) must be included in the consolidated financial statements of a parent company which is required to prepare consolidated financial statements as the ultimate parent for the largest group as defined in [Sections 244 to 267 *UGB*](http://www.ris.bka.gv.at/MarkierteDokumente.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&Index=&Titel=UGB&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=244&BisParagraf=267&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=07.02.2013&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&WxeFunctionToken=fd0a55a0-a9a4-4209-96eb-c5d84bd9b27c), even if no consolidated financial statements are prepared. The provision applies *mutatis mutandis* where the parent's registered office is not in Austria. Subsidiaries which are not included pursuant to [Section 249 *UGB*](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40114066) are also considered Affiliates.] [The companies belonging to the Customer's group of companies listed in Annex 1.13.]
	12. "Agreement" means the present contractual arrangement between the Parties, including all annexes, documents and the like that are expressly referred to.
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| 1. SUBJECT MATTER
	1. The Research Institution possesses special knowledge and experience in the area of [\*definition of the area in which data is to be generated, and, if applicable, whether or what sensor technology is to be used\*].
	2. The Customer is [\*description of the Customer\*] and intends to use the anonymous data generated and made available on the basis of this Agreement in the area of [\*definition of the area in which data is to be used\*] as stipulated herein.
	3. The Customer instructs the Research Institution to fulfil the Performance Target as described in the Specifications (description of the use cases and/or user stories within the meaning of agile project management for generating anonymous data, including the sensor technology used, if any, and the place where such sensors will be used, including quality criteria and the minimum volume or the maximum volume, if any; description of the database to be created (to ensure "data embodiment" on an offline medium); acceptance criteria, if any; (interim) reporting duty, if any, (in each case) including a work/contribution plan, schedule and payment plan; ) in Annex 2.3. Where possible, data will be embodied by the Research Institution in the database at the time data is generated. The database will be delivered to the Customer according to schedule.
	4. Data will be generated by the Research Institution according to schedule, with the Parties undertaking to proceed according to agile project management, i.e. an iterative procedure to define the requirements for data generation and to generate data on the basis of the Customer's user stories for the desired data to be generated for the envisaged data use. If the Research Institution is unable to generate data in accordance with the schedule, it will immediately notify the Customer thereof. The Parties will then, in the course of an agile procedure, agree in good faith on alternative procedures in order to enable the envisaged generation and use of data nevertheless. The Parties shall contribute to the agile procedure accordingly.
	5. The Parties are aware that, despite compliance with all duties of care according to the state of the art in research, the Research Institution may not be able to generate the relevant data for unforeseeable reasons. Therefore, data delivery shall be owed only if the Research Institution is able to collect and/or generate the relevant data sets. Accordingly, the Parties agree that exclusively the provisions regulating contracts for services will be applied to data generation on a supplementary basis; in any case, provisions regulating contracts for work or purchase contracts will not be applied. Consequently, the Research Institution exclusively warrants that it will endeavour to generate data in compliance with the duties of care in accordance with the applicable state of the art in research.
	6. The provisions regulating contracts for work (or materials) shall be applicable on a supplementary basis to the creation of the database on the basis of the data generated. With respect to the provision of data sets the provisions regulating purchase contracts shall be applied on a supplementary basis. In order to enable the Research Institution to use the data sets (generated by it) for research purposes, the Customer grants the Research Institution an irrevocable right of use as stipulated in this Agreement; any further use of the data sets by the Research Institution is prohibited.
	7. The Research Institution and the Customer represent to each other that with respect to the data which will be processed and/or provided according to the Performance Target any past, present or future linkability is excluded, so that the data protection provisions do not apply. The Parties shall indemnify and hold harmless each other in this respect.
	8. The Research Institution will fulfil the Performance Target in accordance with the specifications in Annex 2.3. The Research Institution shall fulfil the Performance Target in compliance with all applicable legal provisions. The Research Institution shall use the data (in any form whatsoever) exclusively in connection with the Performance Target and/or the rights granted for research purposes (Clause 2.14).
	9. The Research Institution covenants that it will fulfil the Performance Target itself or using Subcontractors who have assumed duties and granted rights under this Agreement in this regard.
	10. The Customer will be given data ownership of the embodied data pool subject to Clause 2.11. Where this is not possible, the Parties shall agree that the Research Institution grant the Customer and its Affiliates an irrevocable, exclusive, (sub)licensable, transferable and unencumbered licence, which shall be unlimited as to nature, time and place, including the right of unrestricted processing and tagging, and that the Research Institution waive all rights in connection with the data pool. Where this is not possible either, the Research Institution undertakes to exercise its remaining mandatory rights moderately, and exclusively in accordance with the contractual purpose.
	11. Data ownership and/or rights will be granted concurrently with payment of the consideration stipulated in Clause 5 ("Reservation of data ownership").
	12. The Research Institution will conclude in Written Form any necessary agreements also with its staff, Subcontractors and the like who are directly or indirectly used to fulfil the Performance Target and surrender such agreements to the Customer upon request. [Pursuant to Section 106 *UG* the right of every member of the Research Institution to publish their own scientific or artistic works independently, and the right of members of the Research Institution who made a scientific or artistic contribution to a paper to be stated as co-authors when results of research or development in the arts are published shall remain unaffected by the granting of rights.]
	13. The Research Institution represents that it holds the relevant rights and/or authorisations required under this Agreement. This means, in particular, that no Proprietary Rights of Third Parties will be directly or indirectly infringed upon in connection with the Performance Target, i.e. that either no such rights exist or such rights have been granted comprehensively by Third Parties. [If Third Parties assert claims for infringement of rights due to a violation of provisions of this Agreement, the Research Institution shall indemnify the Customer in this regard upon first demand, irrespective of fault.]
	14. Irrespective of the rights granted or any obligation to maintain secrecy, the Research Institution shall be entitled to use a copy of the data or database and/or its services in connection with the Performance Target free of charge for research and teaching purposes and shall be granted a free, worldwide, irrevocable, non-exclusive, sublicensable licence to that extent.
	15. The Parties shall notify each other of any infringement of a Proprietary Right in connection with the Performance Target of which they obtain knowledge and/or which are presumed and/or alleged. [The Research Institution shall warn the Customer if the Research Institution identifies the potential for infringement of third-party Proprietary Rights by the Performance Target (as a whole or by parts of it).] Either Party undertakes to immediately inform the other Party comprehensively In Writing if it is held liable for infringement of Proprietary Rights in connection with the Performance Target. In that case the Party held liable will coordinate any further steps with the other Party. The other Party may join, or intervene in, the relevant proceedings if permitted by law. [In any case, the Research Institution shall coordinate all procedural steps with the Customer and follow the instructions given by the Customer; the Customer shall indemnify the Research Institution against any consequences of such instructions.] Conclusion of settlements and refraining from continuing such proceedings requires the other Party's consent insofar as there may be legal consequences for the other Party.
	16. Should rights of Third Parties have actually been infringed in connection with the Performance Target, which will also be considered to be the case where an Expert Audit (see Clause 9.5) arrives at that result, the following shall apply. With respect to the Performance Target the Research Institution will [, where reasonable and technically feasible,] use an alternative at its cost which is free of any rights of Third Parties [and indemnify and hold harmless the Customer in this regard, irrespective of fault]. With respect to the alternatives the requirements of this Agreement shall apply *mutatis mutandis*.
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| 1. PRINCIPLES OF PERFORMANCE
	1. In light of the complexity of the Performance Target and the agile procedure model (see Annex 2.3) the Parties agree to cooperate as partners at all times, so that the Parties are required to do everything according to the principle of good faith that is necessary to fulfil the Performance Target.
	2. The Performance Target shall always be fulfilled [professionally, conforming to standards, expertly and diligently] in line with "best practices in [research/ industry]" and in compliance with the applicable legal provisions as well as with the requirements commonly expected and/or defined in Annex 2.3, in particular. For this purpose [the relevant time of performance] [the time of conclusion of the Agreement] shall be decisive.
	3. [For assuring the quality of the Performance Target the Research Institution shall use appropriate and effective quality assurance and quality management systems as defined in Annex 2.3 throughout the term of this Agreement.]
	4. The Parties expressly put on record that they are mutually bound by the general statutory and contractual fiduciary, protection and information duties.
	5. [The Research Institution shall make sure in due time whether there are factual or legal obstacles or concerns that would impede the Performance Target. If necessary, the Research Institution shall warn the Customer without delay and in any case constantly advise it and point out alternative action. The Research Institution shall immediately notify the Customer of any (other) concerns regarding the Performance Target In Writing and specify the reasons for them.
	6. In principle, the Performance Target shall, where possible and in particular in critical key positions, be achieved by employees of the Research Institution. The Research Institution will ensure that all staff used possess the skills and experiences necessary or useful for performing the specific work in compliance with the high quality level agreed.
	7. Third-Party services shall be procured by the Research Institution from Subcontractors in such a way that they will conform to this Agreement. [Complete subcontracting of the Performance Target or of major parts thereof to Subcontractors is in no case permitted.] The Research Institution represents that the Subcontractors, if any, have been selected with due care (and warrants that in the case of replacement any future Subcontractors will be selected with due care) and that it has satisfied itself of their suitability for performing the relevant share of the Performance Target.
	8. The Research Institution shall document its services. The documentation shall (in the agile procedure accordingly) be drawn up [in compliance with (industrial) standards / according to "*best practices* in research"] and, unless expressly stipulated otherwise, in [German / the language commonly used in this research area] and shall be prepared and delivered regularly [and kept up to date].
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| 1. OBLIGATION TO MAINTAIN SECRECY AND TO REFRAIN FROM USE; DATA PROTECTION
	1. It has to be assumed that in the course of (performance of) this Agreement the Parties will obtain knowledge of Trade and Business Secrets of the respective other Party. Therefore, the Parties agree to keep secret all Trade and Business Secrets received and to use them exclusively for the purpose of cooperation under this Agreement and to refrain from exploiting them or have them exploited for their own purposes in any way whatsoever and from making them accessible to uninvolved parties or tolerate this without the prior consent of the other Party In Writing. However, this shall only apply to the extent that it is not in conflict with the rights granted in the Performance Target as defined in Clause 2.
	2. The Parties may disclose Trade and Business Secrets of the other Party to staff of their enterprises [and Affiliates] [or research partners of the Research Institution, respectively,] and Subcontractors, but only to the extent that they absolutely need such information to fulfil the Performance Target. The Parties shall ensure that such persons who may be allowed access to such Trade and Business Secrets will be bound by an agreement In Writing to maintain secrecy and to refrain from use at least in the way agreed herein, which shall continue to apply after they leave the company or after termination of the Subcontractor or research relationship.
	3. The obligation to maintain secrecy and to refrain from use shall not apply to information for which there is evidence that
* it was known to the receiving Party before its transmission;
* it was in the public domain at the time of transmission;
* it has become publicly known after transmission through no fault of the receiving Party;
* after transmission it has been lawfully made accessible to the receiving Party by a Third Party and without any restriction in terms of secrecy or use;
* it was developed independently by the receiving Party; or
* it has to be disclosed on the basis of statutory provisions, court decisions or official orders; in that case the Party required to disclose the same shall immediately notify the other Party of such disclosure to the extent permitted by law.
	1. The above provisions on secrecy and non-use shall continue to be in force even after termination of this Agreement [for an unlimited period of time / for a period of five years] for as long as the information is not in the public domain.
	2. According to the Parties' mutual understanding only anonymous data will be processed, which means that data protection law is not applicable.
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| 1. FEE
	1. The fee to which the Research Institution is entitled for the Performance Target has been agreed in Annex 5.1 in accordance with the payment plan in Annex 2.3. In consideration of data generation, creation of the database and the rights granted to the data pool the Research Institution shall be paid a one-off fee as per Annex 5.1.
	2. Work will be invoiced exclusive of [plus] value added tax. [If it turns out that the work or parts of the work provided by the Research Institution is subject to value added tax, the Research Institution shall be entitled to invoice value added tax subsequently. The Customer agrees to pay value added tax subsequently.]
	3. [In particular for the purposes of full cost accounting as applied by the universities the following indexation shall apply, which will become effective as of 1 January of every calendar year. The basis is [indexation on the basis of the Collective Bargaining Agreement for Employees of Research Institutions (Collective Bargaining Agreement for Universities)]. If the increase in the average minimum salary is not announced timely before 1 January, the fees shall be adjusted and settled retroactively. The calculation of value adjustments is always based on calendar years. If neither the said index nor an index replacing the same is available, the fee subject to indexation shall be calculated by analogy to the principles most recently relevant to indexation.]
	4. [The agreed fee shall cover all costs and expenses incurred to achieve the Performance Target in full. This means that, for example, ancillary services are included. The agreed fee constitutes an "all-in" fee (except for travel expenses), unless defined otherwise in connection with the Performance Target. Accordingly, no other costs or the like may be charged in addition to those fees. This applies in particular to ancillary costs, licence costs, e.g. for the database, costs of execution of the Agreement, etc. The agreed fees include all auxiliary means and the like that may be required for fulfilling the Performance Target.]
	5. Invoices shall be payable according to the payment plan in Annex 2.3 without any deduction within [30/ 60] days of receipt. Payments shall be made, without exception, by transfer to an account with an Austrian credit institution to be advised by the Research Institution.
	6. In the case of late payment, even through no fault, interest at the statutory rate applicable between entrepreneurs will accrue on the outstanding amount as of the end of the payment period.
	7. If excess payments have been made, the Customer may in any case claim refund of the same according to the rules of unjust enrichment. Excess payments, if any, shall be paid back by the Research Institutions within [30 / 60] days of the Customer's demand in Written Form.
	8. Payments and checks of invoice and also any failure to reject or return an invoice for new issue in the course of a check of invoices, do/does not have the character of a declaration of intent and, thus, not the effect of acknowledgement or acceptance, in particular.
	9. To the extent that claims (for damages) of the Customer have expressly been acknowledged by an Expert Audit or by the Research Institution or ascertained by a non-appealable/final court judgment, such claims may be offset by the Customer against fees and any other claims of the Research Institution; otherwise offsetting or withholding payments is excluded.
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| 1. **STRUCTURE OF THE PARTIES INVOLVED**
	1. The Parties have agreed on an agile procedure for defining (including quality requirements relating to the services), implementing (including documentation plus quality assurance and quality management systems, and acceptance) and monitoring the Performance Target and the budget(s); see the description of the Performance Target in Annex 2.3.
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| 1. WARRANTY AND LIABILITY
	1. If it is foreseeable that the Research Institution will not (be able to) observe one or more deadlines agreed, the Research Institution shall present a detailed schedule of measures and procedures describing the measures which will be taken by the Research Institution to avoid default and its consequences or to minimise the same. In the case of default [through the Research Institution's fault / caused by the Research Institution] the Customer may either
* insist that the Performance Target be fulfilled after having granted a reasonable grace period; or
* proceed to substitute performance or instruct others to do so; or
* after having granted a reasonable grace period, terminate the Agreement with regard to the parts affected by the default.

Any additional claims of the Customer, including but not limited to claims for damages, shall remain unaffected. * 1. The Research Institution assumes no warranty for the completeness or accuracy of the data generated; see Clause 2.5 above. Creation and delivery of the database by the Research Institution is subject to the warranty regulations of contracts for work.
	2. The Research Institution shall be liable in accordance with the statutory provisions on damages for harm to life, limb or health, and in accordance with any mandatory liability legislation, such as the Austrian Product Liability Act [*Produkthaftungs­gesetz/PHG*], and explicit warranties or guarantees, and in the case of malice and/or wilful intent and/or blatantly gross negligence. For the rest, liability on the part of the Research Institution shall be excluded, with the Customer bearing the burden of proving the degree of fault.
	3. Notwithstanding special provisions of this Agreement, the Parties are entitled to compensation for damage culpably caused to them by the other Party as follows:
* in the case of wilful intent or gross negligence: damages, including for lost profit and any and all consequential damages;
* in cases of slight negligence liability shall be [excluded / limited to 50% of the fee for all damage.]
	1. The agreed liability caps do not apply to
* personal injuries or
* [cases where Proprietary Rights of Third Parties are infringed – see Clause 2.16, and]
* costs of substitute performance as defined above.
	1. For the rest, damages, statutory limitation and the burden of proof are subject to the statutory provisions.
	2. To the extent that liability on the part of the Research Institution is excluded or limited, this shall also apply to personal liability of legal representatives or agents [translator's note: *Erfüllungsgehilfe* as defined in Section 1313a *ABGB*] or Subcontractors, if any.
	3. The Customer shall take out with a renowned insurance company whose registered office is in the EU adequate insurance at its costs against all risks arising out of this Agreement for the Research Institution and its staff for the term of this Agreement and for as long as claims may be asserted against the Research Institution or its staff after expiry or termination of the Agreement, and shall prove it to the Research Institution upon first demand, in particular by presenting the relevant policies.
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| 1. **FORCE MAJEURE AND IMPEDIMENTS**
	1. An event of (hereinafter referred to as) "Force Majeure" means situations, such as
* armed conflicts in the territory of the Republic of Austria or directly affecting the same,
* revolutions, riots, terrorist acts or acts of sabotage by Third Parties,
* plagues, epidemics or pandemics,
* strikes or lockouts directly affecting the Research Institution,
* floods, earthquakes, fires or natural disasters and
* similar events.
	1. Neither the Research Institution nor the Customer shall be liable for non-fulfilment or delayed fulfilment of their relevant obligations, provided that (i) such non-fulfilment or delayed fulfilment was caused by an event of Force Majeure and that event actually delays or interrupts performance, if (ii) the affected Party is not responsible for the event of Force Majeure and the consequences of the same could not have been warded off by it even with due care, if (iii) it notifies the other Party promptly In Writing of the nature and extent of the Force Majeure that has led to default or delay on its part and (iv) it has used its best efforts to minimise the impact of the event of Force Majeure on the fulfilment of its duties under this Agreement and to resume its duties as quickly as possible. If the event of Force Majeure continues for more than six months, this Agreement may be terminated by either Party by giving fourteen (14) days' notice. The Agreement will end upon expiry of this period of notice.
	2. A performance impediment (hereinafter "Impediment") means a situation where (i) the Customer (or Third Parties in its sphere of control) fail(s) to take contributing actions and/or provide contributing services which (a) the Customer (or the Third Party in its sphere of control) is required to take or provide and which (b) are required for the Research Institution's further performance, (ii) the Impediment leads to an actual delay in or interruption of performance by the Research Institution and if (iii) the Impediment is not the Research Institution's fault. If the Research Institution is [objectively] unable to fulfil its contractual duties in whole or in part on account of an Impediment, the Research Institution will be released from fulfilling those duties to the extent to which it is directly affected by the Impediment for as long as the Impediment continues.
	3. The Research Institution shall in any case take all reasonable steps to enable full resumption of performance; the Research Institution shall, within a reasonable period of time, present the Customer with an initial analysis of the Impediment including the measures expected to be necessary, and coordinate the same with the Customer. In the case of imminent danger, if no decision can be obtained from the Customer at short notice, the Research Institution shall immediately take appropriate emergency measures in order to ward off the Impediment and minimise damage.
	4. If the Research Institution had to render additional work because of the Impediment or if it incurred frustrated precautionary costs, the Research Institution shall be entitled to consideration in addition to the agreed fee on the following conditions:
* the Research Institution has fulfilled its notification duties, and
* the Research Institution has provided evidence of such work and/or precautionary costs.
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| 1. **DISPUTE RESOLUTION**
	1. In this context Escalation has the neutral meaning of gradual referral of an issue to the next level (hereinafter "Escalation Level"). The Parties primarily see Escalation as a means to clarify unclear situations and/or to resolve disputes. If this cannot be achieved at the lowest level of Escalation, the matter shall be referred to the next level according to the rules defined hereinafter and so on. The positions taken during such talks and the information provided therein (i) shall in no case compromise the legal position of a Party (non-prejudicial effect) and (ii) shall in no case be interpreted to the effect that a Party would be impeded at any time or in any way to take legal action or to exercise rights or remedies to which it is otherwise entitled.
	2. Dispute resolution follows a two-tier dispute resolution mechanism, with the roles and working groups of the first and second level having been defined in Annex 10.3 and the second level to be comprised of the managing body of the Research Institution or the management, if possible.
	3. Escalation Level 1: In a first step, the Parties shall try and resolve any and all disputes at an operational level. The relevant item on the agenda shall explicitly be referred to as Escalation issue. Disputes shall be discussed orally and relevant information shall be collected and analysed. If the dispute cannot be resolved in two meetings in which the dispute was dealt with or within a maximum period of twenty-five (25) business days, either Party may refer the dispute to Escalation Level 2 by notice in Written Form ("Escalation Notice").
	4. Escalation Level 2: The Level 2 working group shall fix dates for one or more concrete talks to assess, discuss and try to resolve the dispute by consent within one month of receipt of the Escalation Notice.
	5. Expert Audit. Once an Escalation Notice has been dealt with at Level 2, either Party may demand and institute an Expert Audit if there is disagreement between the Parties on a specific technical or commercial issue. This requires that the Party that wishes to institute the Expert Audit has invited the other Party before by notice In Writing and has provided reasons and granted a reasonable period to resolve the dispute or (if the dispute is about performance to be rendered by the other Party) to render performance in conformity with the contract. After expiry of that period the Party which demanded resolution of the dispute or performance in conformity with the contract shall be entitled to demand and institute an Expert Audit. It shall also be entitled to interrupt or cancel the Expert Audit which has been instituted. The Expert Audit serves as (out-of-court) expert evidence. An Expert Audit shall be conducted by an independent expert (hereinafter "Auditor") from an area of expertise that is as closely related to the case at hand as possible. The Auditor shall be put under a comprehensive obligation to main secrecy. The Auditor should be appointed by consent by the Level 2 working group, if possible. If this cannot be done, the following shall apply:
* The Customer has the right to propose to the Research Institution three candidates, from among which the Research Institution may select the Auditor within five (5) business days. If the Research Institution fails to do so, the Customer will appoint the Auditor.
* If the Customer does not propose three candidates within fifteen (15) business days of the failure to reach an agreement, the Research Institution has the right to propose to the Customer three candidates according to the above process within fifteen (15) business days, from among which the Customer may select the Auditor within five (5) business days. If the Customer fails to do so, the Research Institution will appoint the Auditor.
* With regard to challenges of Auditors Section 586 of the Austrian Code of Civil Procedure [Zivilprozessordnung/ZPO] in conjunction with Section 19 and 20 of the Austrian Jurisdiction Code [Jurisdiktionsnorm/JN] shall apply accordingly. Even if only one nominee is challenged for well-founded reasons, a new proposal for three candidates shall be made.

An Expert Audit shall be comprised of the findings, the expert opinion and (if required due to the findings and expert opinion) recommendations of appropriate measures (hereinafter referred to as "Expert Recommendations"). In his Expert Recommendations the Auditor shall in particular state specific measures, and reasonable deadlines for taking such measures, by which the target condition is to be brought about (or restored). The Auditor shall issue Expert Recommendations as quickly as possible and communicate them to the Parties simultaneously, where possible. The Parties shall assist in such Expert Audits and generally support the Auditor to the best possible extent in fulfilling his tasks, including, without limitation, by providing all documents, explanations, statements and documentation and by granting access to the relevant infrastructure and staff as necessary or useful for the Audit. The Auditor may also call in other experts for certain topics. Both the Auditor and the other experts shall be granted rights of inspection and access to the broadest extent possible. The costs of the Expert Audit (costs of the Auditor and of the other experts called in by them, if any) will be borne as determined by the Auditor according to the "judicial principle of reimbursement of costs according to the proportion by which the Parties have won" after the Parties have been heard; in the case of doubt he shall determine that the costs be borne on a 50:50 basis. The Party who stops or cancels the Expert Audit shall bear the total costs incurred by then. For the rest, either Party shall bear itself the other costs incurred by it in connection with the Audit.Commenced or concluded Expert Audits shall constitute no procedural impediment (no pending dispute and no res judicata). While legal proceedings are pending, no Expert Audits shall be conducted with respect to the relevant dispute; Expert Audits which have been commenced in this matter shall be discontinued; reimbursement of costs will then depend on who "wins the case" in court.* 1. For the period in which the Parties try to resolve the dispute at the second level or by means of an Expert Audit, statutory limitation of all related claims shall be suspended.
	2. All disputes arising out of or in connection with this Agreement (including the issue of its valid conclusion and existence) shall exclusively be decided by the court having jurisdiction over [the Customer / the Research Institution], depending on the amount in dispute (ordinary courts of law).
	3. [Irrespective of whether a dispute over the Performance Target and/or the fee is pending or continues and irrespective of any formal or informal attempts of the Parties to resolve such dispute, the Parties shall continue to fulfil their contractual obligations and tasks.]
	4. Austrian law shall apply in any case; the conflict of laws rules and UN Sales Law shall be excluded.
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| 1. **OTHER PROVISIONS**
	1. The Parties waive their right to avoid the Agreement on account of mistake (including a mistake in calculation) [but not on account of *laesio enormis* [translator's note: under the legal concept of *laesio enormis* a contract may be challenged based on the argument that the value of the item delivered is less than 50% of the consideration paid]] or frustration of contract or any other present or future grounds for avoidance and root defects.
	2. This Agreement and all its documents, including, without limitation, the Annexes to which it refers or which it states to be integral parts hereof contain all contractual arrangements made by and between the Parties. [General Terms and Conditions of Purchase, if any, and similar pre-worded contract terms shall not apply. This shall also apply if such terms are subsequently stated in (change) offers, on invoices or wherever.] No oral side agreements exist.
	3. If a Party refrains from exercising rights or asserting claims in a specific case, that Party will not be impeded from exercising such rights in other cases; non-exercise (even repeated) shall in no case be deemed a waiver.
	4. Rights to offset or withhold payment shall be reciprocally excluded.
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| 1. **FINAL PROVISIONS**
	1. Without the prior consent of the other Party in Written Form no rights or duties under this Agreement may be transferred to Third Parties.
	2. This Agreement contains all contractual arrangements made by and between the Parties regarding the object of the Performance Target. Drafts, written correspondence preceding the Agreement, etc. may not be used for interpretation of this Agreement.
	3. Modifications of or amendments to this Agreement, including the abolishment of the requirement of Written Form, shall be made In Writing in order to be effective.
	4. If any provision of this Agreement is or becomes ineffective, void, unlawful or unenforceable, the validity of the remaining provisions of this Agreement shall not be affected. The ineffective, void, unlawful or unenforceable provision(s) shall be replaced by a provision which comes as close as possible to the will of the Parties to the extent permitted by law and which reflects the commercial effect of the ineffective, void, unlawful or unenforceable provision(s) in the best possible way.
	5. This Agreement will be executed in two (2) counterparts, each of which will be deemed an original and of which each Party will be given one.
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| 1. **CONTACT**

Contact on the Customer's side:Name:\_\_\_\_\_\_\_\_\_\_\_\_Address:\_\_\_\_\_\_\_\_\_\_\_\_Email:\_\_\_\_\_\_\_\_\_\_\_\_Phone:\_\_\_\_\_\_\_\_\_\_\_\_Contact at the Research Institution:Name:\_\_\_\_\_\_\_\_\_\_\_\_Address:\_\_\_\_\_\_\_\_\_\_\_\_Email:\_\_\_\_\_\_\_\_\_\_\_\_Phone:\_\_\_\_\_\_\_\_\_\_\_\_Every change of contact shall immediately be notified to the other Party. In the case of a failure to make such notification all statements shall be deemed duly served in any case. |

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| 1. **SIGNATURES**

The undersigned warrant that the Party for which they sign will be bound by their signatures *ipso jure*.For the CustomerDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Name and job title/position] [signature]For the Research InstitutionDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Name and job title/position] [signature] |  |