ANNEX V

DRAFT CONTRACT

(REFERRED TO IN ARTICLE 11)

DRAFT CONTRACT

ACQUISITION OF SERVICES

CONTRACT FOR THE ACQUISITION OF _____, AWARDED TO _____, FOR THE AMOUNT OF _____€ (_____), PLUS VAT AT THE APPLICABLE LEGAL RATE

Between

ASSOCIAÇÃO BIOPOLIS, hereinafter referred to as the **FIRST PARTY**, with registered office at the Vairão Campus of the University of Porto, Rua Padre Armando Quintas n.º 7, 4485-661 Vairão, Portugal, with the Fiscal Identification number 516033727, represented in this act by _____ and _____, both Executive Directors, with powers for the act, by virtue of the provisions of the respective By-laws of Associação Biopolis (which can be consulted online via the link https://publicacoes.mj.pt/Pesquisa.aspx);

and the entity

_____, hereinafter referred to as **SECOND PARTY**, with registered office at _____, legal person number _____, represented by _____, holder of the Identification Card no. _____, person whose identity has been legally recognised and who can sign for the entity he represents in the capacity of _____, in accordance with the document attached to the procedure,

this contract is entered into, following the procedure with the reference _____, authorised by decision of the Executive Committee of Associação BIOPOLIS of __of_____of 20___, under the terms of article 3(1) of Decree-Law no. 60/2018, of 3 August, the draft of which was approved by decision of the Executive Committee of Associação BIOPOLIS of __of_____of 20___, which is governed by the following clauses:

Clause 1

Object

The purpose of this contract is for the **SECOND PARTY** to provide the **FIRST PARTY** with _____ *[identify object]* services under the terms described in Annex I - "Technical Specifications" resulting from the consultation carried out under Decree-Law no. 60/2018, of 3 August.

Clause 2

Contract duration [adapt, taking into account the specific case]

The duration of the contract is ____ (in full) **days/months/years**, from the date of its celebration, in accordance with its terms and conditions and the provisions of the law, without prejudice to any ancillary obligations that may last beyond its termination.

Clause 3

Conditions for the provision of services [adapt, taking into account the specific case]

The facilities, equipment and any other means necessary for the exact and punctual fulfilment of the contractual obligations are the full responsibility of the **SECOND PARTY**.

Clause 4

Main obligations of the SECOND PARTY

1 – Without prejudice to other obligations provided for in the applicable legislation and others specifically provided for in this contract, the following main obligations arise for the **SECOND PARTY**: [add/remove, taking into account the specific case]

a) Provide the services under contract, under the terms, conditions and characteristics set out therein, as well as the technical specifications described in Annex I, which forms an integral part hereof;

b) To have staff of recognised moral integrity, physical fitness and appropriate technical training at its service;

c) Use the facilities and equipment entrusted to them correctly, not using them in any way other than what they should be used for, respecting the instructions for use and/or operation given to them by the **FIRST PARTY**, as well as, and in particular, the applicable security rules, namely with regard to the keys to the facilities;

d) Communicate to the **FIRST PARTY** the appointment of the Client Manager responsible for the contract and any related changes;

e) Ensure that for all matters submitted by the **FIRST PARTY** to the respective Client Manager, the response time does not exceed 10 (ten) working days in normal situations and 3 (three) working days in urgent situations;

f) Take responsibility for any damage caused directly to the **FIRST PARTY** or to third parties

as a result of their fault or wilful misconduct in the performance of the contract;

g) To inform the **FIRST PARTY** in advance, in a reasoned manner, as soon as it becomes aware of any facts that make it totally or partially impossible to provide the services or fulfil any other obligation, undertaking, if this is accepted and appropriate, to remedy the breach within a reasonable period of time;

h) Maintain, during the execution of the contract, all the conditions of qualification required in the procurement procedure, as well as a regularised tax and social security situation;

i) Communicate any fact that occurs during the performance of the contract and that changes, in particular, the company name, the legal representatives if relevant to the fulfilment of the contract, the legal status or commercial situation, as well as changes to the contracts and addresses indicated in the contract for its management.

2 – The **SECOND PARTY** is also obliged, in particular, to use all the human, material and informatic resources that are necessary and appropriate for the execution of the contract, as well as to establish the organisational system necessary for the perfect and complete execution of the contractual commitments to which it is obliged.

Clause 5

Charges with intellectual or industrial property rights

The **SECOND PARTY** is responsible for any charges arising from the use of intellectual or industrial property rights within the scope of the contract.

Clause 6

Verification and acceptance of the object of the contract [if applicable/adapting if necessary]

1 – Without prejudice to other steps specifically provided for in Annex I, once the services that are the object of the contract have been provided, the **FIRST PARTY**, by itself or through a third party designated by it, shall, within 20 days, carry out a quantitative and qualitative analysis of the services provided, with a view to verifying, respectively, that they meet the characteristics and technical and operational requirements defined in Annex I of this contract, as well as other requirements required by law.

2 – In the analysis referred to in the previous paragraph, the **SECOND PARTY** must provide the **FIRST PARTY** with all the necessary co-operation and clarifications.

3 – In the event that the analysis referred to in paragraph 1 does not prove full compliance of the services provided with the legal requirements, or in the event that there are discrepancies with the terms and conditions defined in this contract, the **FIRST PARTY** shall inform the **SECOND PARTY** in writing.

4 – In the case provided for in the previous paragraph, the **SECOND PARTY** must make the necessary adjustments and/or additions, at its own expense, within the reasonable timeframe determined by the **FIRST PARTY**, in order to guarantee the conformity of the services and full compliance with the legal requirements and the required characteristics, specifications and technical requirements

5 – After the necessary adjustments and/or additions have been made by the **SECOND PARTY**, within the respective deadline, the **FIRST PARTY** shall carry out a new analysis, under the terms

of paragraph 1.

6 – If the analysis referred to in paragraph 1 proves that the services provided fully comply with the legal requirements and no discrepancies are detected with the terms and conditions defined in this contract, a **Declaration of Acceptance** will be issued by the **FIRST PARTY** within a maximum of 10 days from the end of the analysis.

7 -- The issue of the declaration referred to in the previous paragraph does not imply acceptance of any discrepancies with legal requirements or with the characteristics, specifications and technical requirements set out in this contract and its annexes.

Clause 7

Object and term of the duty of secrecy

1 – The **SECOND PARTY** must maintain secrecy and guarantee confidentiality by not disclosing the conditions established in this contract or any technical or non-technical, commercial or other information and documentation relating to the **FIRST PARTY** that may come to its knowledge in the context of the formation and execution of the contract, including its agents, employees, collaborators or third parties involved, except with the express consent of the **FIRST PARTY**.

2 – Information and documentation covered by the duty of secrecy may not be passed on to third parties or used in any way other than directly and exclusively for the performance of the contract.

3 – Information and documentation that was demonstrably in the public domain at the time it was obtained by the **SECOND PARTY** or that the **SECOND PARTY** is legally obliged to disclose under the law, legal proceedings or at the request of regulatory authorities or other competent administrative bodies is excluded from the duty of secrecy.

4 – The duty of secrecy shall remain in force indefinitely, until expressly authorised otherwise by the **FIRST PARTY**, as from the fulfilment or termination of the contract, for whatever reason, without prejudice to any subsequent legal duties relating, in particular, to the protection of commercial secrets or the credibility, prestige or trust owed to legal persons.

Clause 8

Data Protection Regulation

1 – The **SECOND PARTY** undertakes to comply with the provisions of all applicable legal provisions on the processing of personal data, within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("General Data Protection Regulation") and other applicable Community and national legislation, in relation to all personal data it accesses within the scope of the services to be provided under the contract to be entered into.

2 – The **SECOND PARTY** undertakes, in particular, not to copy, reproduce, adapt, modify, alter, delete, destroy, disseminate, transmit, disclose or, by any other means, make available to third parties the personal data to which it has access or which is transmitted by the **FIRST PARTY**

under the contract to be concluded, without having been expressly instructed to do so, in writing, by the **FIRST PARTY** or by the data subjects in the exercise of their respective rights.

3 - The **SECOND PARTY** undertakes to implement the technical and organisational measures necessary to protect the personal data processed on behalf of the **FIRST PARTY** against their accidental or unlawful destruction, accidental loss, alteration, dissemination or unauthorised access, as well as against any other form of unlawful processing of the same personal data.

4 – The measures referred to in the previous paragraph must guarantee an adequate level of security in relation to the risks presented by the data processing, the nature of the data to be protected and the risks of varying likelihood and severity to the rights and freedoms of natural persons.

5 – The **SECOND PARTY** undertakes that access to the personal data processed under the contract to be concluded will be strictly limited to the personnel who need to have access to it for the purposes of fulfilling the obligations assumed by the **SECOND PARTY**.

6 – The **SECOND PARTY** undertakes to notify the **FIRST PARTY** of any situation that may affect the processing of personal data or in any way give rise to non-compliance with the legal provisions on data protection, and shall also take all necessary measures within its reach to immediately put an end to it.

7 – The **SECOND PARTY** shall be liable for any damage that the **FIRST PARTY** may incur as a result of the processing of personal data by itself or its staff or in violation of applicable legal regulations, when such violation is attributable to the **SECOND PARTY**, and jointly and severally with the staff within the scope of the service provided, when the violation is attributable to their actions.

Clause 9

Contract price and payment terms [adjust according to the specific case]

1 – For the services provided under the contract, as well as for the fulfilment of the other obligations set out in this contract, the **FIRST PARTY** must pay the **SECOND PARTY** the contractually established price, under the terms of this clause.

2 – The total cost of this contract is _____€ (in full), of which _____€ (in full) relates to the value of the services to be provided and _____€ (in full) to Value Added Tax at the rate of __% [if applicable].

3 – The price referred to in the previous paragraph includes all costs, charges and expenses for which the **FIRST PARTY** is not expressly responsible, namely accommodation, food and travel costs for human resources, acquisition, transport, storage and maintenance costs for material resources, as well as any costs arising from the use of trademarks, patents or licences.

4 – The amount owed by the **FIRST PARTY** must be paid within 30 (thirty) days of receiving the respective invoice, which can only be issued after the due date of the respective obligation and provided that the required legal formalities have been complied with.

5 –For the purposes of the preceding paragraph, the obligation is considered due after the provision of the services to which it relates, with the issue of the Declaration of Acceptance, referred to in paragraph 6 of Clause 5 of this contract, by the **FIRST PARTY**. OR For the purposes of the previous paragraph, the obligation is deemed to be due with the punctual execution of the services and delivery of the corresponding elements, under the terms and in

accordance with the provisions of this contract and its Annex I. OR For the purposes of the previous paragraph, the obligation shall be considered due on the first day of the month following the provision of the services.

6 – If the **FIRST PARTY** disagrees with the amounts indicated on the invoices, it must inform the **SECOND PARTY** in writing of the reasons for this and the latter is obliged to provide the necessary clarifications or issue a new corrected invoice.

7 – Regardless of what is mentioned in the previous paragraphs, payments to be made under the contract will only be carried out after all the legal formalities for public expenditure have been verified.

Clause 10

Costs Centre

The cost of this contract will be borne by the funds entered in the Cost Centre with the ref. _____.

Clause 11

Contractual penalties

1 – Failure to comply with the obligations arising from the contract, for reasons attributable to the **SECOND PARTY**, entitles the **FIRST PARTY** to the imposition of a financial penalty, to be set according to the seriousness of the breach, namely:

a) For failure to comply with the delivery dates and deadlines for the services covered by the contract, up to 0.5% of the contract price, for each day of delay. [the penalties deemed best suited to the specific case should be adjusted/developed]

2 – In determining the seriousness of the breach, the **FIRST PARTY** shall take into account, in particular, the duration of the offence, its possible repetition, the degree of fault of the **SECOND PARTY** and the consequences of the breach.

3 – The accumulation of pecuniary penalties provided for in this clause may not exceed 20% of the contract price, without prejudice to the cancellation of the contract under the legal terms.

4 – In cases where the limit set out in the previous paragraph is reached and the **FIRST PARTY** decides not to terminate the contract because it would seriously harm the public interest, that limit is raised to 30%.

5 – For the purposes of the limits provided for in paragraphs 3 and 4, when the contract foresees express or tacit extensions, the value of the penalties to be applied shall be based on the price of its initial term.

6 – There shall be deemed to be definitive non-compliance, susceptible to the application of the sanction of cancellation when, after notification and the granting of a deadline for the fulfilment of the obligation in default, the **SECOND PARTY** continues to incur in non-compliance.

7 – The **FIRST PARTY** may offset the payments due under the contract against the pecuniary penalties due under this clause.

8 – Any pecuniary penalties applicable to the **SECOND PARTY** shall not prevent the **FIRST PARTY** from demanding compensation for the excess damage.

9 – In the event of delay by the **FIRST PARTY** in the fulfilment of its pecuniary obligations, the **SECOND PARTY** is entitled to default interest on the amount owed at the rate legally established for this purpose for the period corresponding to the delay.

Clause 12

Contract manager

1 – The competent body appoints _____ [name, position], as Contract Manager, as he/she [adjust, according to the specific case] has the necessary technical knowledge for the role.

2 – The Contract Manager is responsible for exercising the powers assigned by the **FIRST PARTY** in terms of monitoring execution and verifying compliance with all legal and contractual obligations assumed by the **SECOND PARTY**.

3 – In carrying out his/her [adjust, according to the specific case] duties, the Contract Manager shall have the right to access and consult all documentation relating to the activities covered by this procedure.

4 – If the Manager detects deviations, defects or other anomalies in the execution of the contract, he/she [adjust, according to the specific case] must immediately report them to the competent body, proposing in a reasoned report the corrective measures that are appropriate in each case.

5 – The **SECOND PARTY** undertakes to co-operate with the Contract Manager, appointed by the **FIRST PARTY**, in carrying out the monitoring activities that the latter is responsible for.

Clause 13

Revocation of contract

This contract may be revoked at any time by written agreement signed by the legal representatives of both parties, which must include reference to this contract and its amendments, as well as the date on which the revocation takes effect.

Clause 14

Resolution by the FIRST PARTY

1 –Without prejudice to other grounds for cancellation provided for by law, the **FIRST PARTY** may terminate the contract if the **SECOND PARTY** seriously or repeatedly violates any of its obligations.

2 – The right of cancellation referred to in the previous paragraph shall be exercised by means of a declaration sent to the **SECOND PARTY**.

3 – Failure by the **SECOND PARTY** to fulfil its obligations entitles the **FIRST PARTY**, in addition to the right to terminate the contract, to the corresponding legal compensation, under the general terms of the law.

Clause 15

Resolution by the SECOND PARTY

1 – Without prejudice to other grounds for cancellation provided for by law, the **SECOND PARTY** may terminate the contract when:

a) Any amount owed has been outstanding for more than 6 (six) months or the amount outstanding exceeds 25% of the contract price, excluding interests;

2 – The right of resolution shall be exercised by judicial means under the terms of Clause 19.

3 – In the cases provided for in paragraph 1(a), the right of resolution may be exercised by means of a declaration sent to the **FIRST PARTY**, which shall take effect 30 (thirty) days after receipt of said declaration, unless the latter fulfils the obligations in arrears within that period, increased by the interest on late payment due.

4 – Termination of the contract under the terms of the preceding paragraphs does not determine the repetition of the provisions already carried out by the **SECOND PARTY**, but all the obligations under the contract cease.

Clause 16

Acts of God or force majeure

1 – Penalties may not be imposed, nor shall non-performance be considered, in the event of non-fulfilment of contractual obligations by either party as a result of force majeure, which is understood to be conditions that make it impossible to fulfil the contract beyond the control of the affected party, such as circumstances that could not be known or foreseen at the time the contract was concluded and the effects of which were not reasonably required to circumvent or avoid, and/or earthquakes, floods, fires, epidemics, sabotage, strikes or other collective labour disputes, international embargoes or blockades, acts of war or terrorism, riots and injunctive governmental or administrative orders, with exception of those resulting from failure to comply with legal duties and rules to which the parties are bound.

2 – The party invoking unforeseeable circumstances or force majeure must notify the other party and justify such situations, as well as inform them of the foreseeable timeframe for restoring the situation.

3 – Force majeure determines the extension of the deadlines for fulfilment of the contractual obligations affected for the period of time demonstrably corresponding to the impediment resulting from the force majeure.

Clause 17

Subcontracting and cession of contractual position

The **SECOND PARTY** may not subcontract or assign its contractual position or any of the rights and obligations arising from the contract without prior written authorisation from the **FIRST PARTY**, under the terms of the applicable legislation.

Clause __

Execution and release of the security deposit [if applicable]

1 – In order to guarantee the conclusion of the contract, as well as the exact and punctual fulfilment of the obligations arising from its conclusion, the **SECOND PARTY** has provided a

guarantee, through _____, issued on _____, by _____, for a maximum amount of _____€ (_____ euros), corresponding to _ % of the contract price, which has been deemed compliant and filed in the respective file.

2 – The guarantee provided by the **SECOND PARTY** under the terms of the previous paragraph may be executed by the **FIRST PARTY**, without the need for a prior judicial or arbitration decision, to satisfy any claims resulting from late payment, defective fulfilment, definitive breach by the **SECOND PARTY** of its contractual or legal obligations, including the payment of penalties, or for any other purposes specifically provided for in the contract or the law.

3 – The termination of the contract by the **FIRST PARTY** does not prevent the security deposit from being enforced.

4 – Partial or total forfeiture of the security provided by the co-contractor obliges the **SECOND PARTY** to replenish the respective amount within 15 days of the **FIRST PARTY** notification to that effect.

5 – The security deposit referred to in the previous paragraphs shall be released under the terms of article 295 of the Public Contracts Code.

Clause __

Withholding and release of payments [if applicable]

1 – In order to guarantee the conclusion of the contract, as well as the exact and punctual fulfilment of the obligations arising from its conclusion, the sums that the **SECOND PARTY** has to receive in each of the foreseen payments will be withheld by __% of said payment(s).

2 – The retention referred to in the previous paragraph shall be released under the terms of article 295 of the Public Contracts Code.

Clause 18

Communications and notifications

1 – Notwithstanding the fact that other rules on notifications and communications between the parties to the contract may be approved, these must be addressed, under the terms of the Public Contracts Code, to the contractual domain or registered office of each party, as identified in the contract.

2 – Any change to the contact details contained in the contract must be communicated to the other party.

Clause 19

Jurisdiction

For the resolution of all disputes arising from the interpretation or execution of the contract, the jurisdiction of the Administrative and Fiscal Court of Oporto is stipulated, with express waiver of any other.

Clause 20

Contract

The contract consists of the respective contractual clauses and its annexes.

Clause 21

Applicable legislation

1 – The contract is administrative in nature and governed by Portuguese law.

2 – Pursuant to Article 3(1) of Decree-Law no. 60/2018, of 3 August, Part II of the Public Contracts Code, approved by Decree-Law no. 18/2008, of 29 January, with the updates in force, shall not apply to this contract.

3 – In everything that is not specifically regulated, the provisions of the Public Contracts Code, approved by Decree-Law no. 18/2008, of 29 January, with the updates in force, and other applicable specific legislation, in particular the provisions of the Code of Administrative Procedure, shall apply.

Annex I

Technical Specifications

[Description as complete and detailed as possible of the services to be provided/tasks to be carried out]

(...)

This contract is drawn up in duplicate, one copy for each of the parties, initialled on each page and signed on the last. If it is impossible to sign manually, the contract shall be signed electronically, using a qualified digital electronic signature, and shall take effect on the date of the last signature.

Vairão, __ of _____ 20__.

_____

(First Party)

_____

(Second Party)