

ESA Contract No. 4000xxxxxx/xx[year]/XX[country code]/XX[initials of CO]/xx[initials of ACO]

with

[Contractor]

[Title of Contract]



DRAFT CONTRACT

Between:

The EUROPEAN SPACE AGENCY,
(hereinafter called “the Agency” or “ESA”),

having its seat at: 24 rue du Général Bertrand, CS 30798, 75345 Paris CEDEX 7, France,
represented by its Director General, Mr Johann-Dietrich Wörner,

acting through its establishment:

The European Space Research and Technology Centre (ESTEC),
located at: Keplerlaan 1,
2201 AZ Noordwijk,
The Netherlands,

of the one part,

and:

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

whose Registered Office is at:

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

represented by its, Ms/Mr,

of the other part,

the following has been agreed between the Agency and the Contractor hereinafter also referred to individually as “Party” and collectively as the “Parties”:



Contents

ARTICLE 1 - SUBJECT OF THE CONTRACT; GENERAL TERMS OF EXECUTION6
ARTICLE 2 - DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY 8
ARTICLE 3 - PRICE10
ARTICLE 4 - PAYMENTS AND INVOICING..... 11
ARTICLE 5 - SPECIFIC PROVISIONS 16
ARTICLE 6 - INTELLECTUAL PROPERTY RIGHTS..... 20
ARTICLE 7 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS
UNDER THE CONTRACT 24

Annex:	Personal Data Processing Annex
Appendix 1:	Statement of Work
Appendix 2:	Inventory/Fixed Asset Record

DEFINITIONS

“Advance Payment”	means a payment foreseen in the Contract intended to provide the Contractor with liquidity to allow the initiation of the contractual works.
“Agency’s Own Requirements”	means the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1(a) and (b) of the European Space Agency Convention.
“Contract”	means an agreement established in writing the subject of which is any activity carried out to- or for the Agency in exchange of a price or another consideration, including any amendment to such agreement via a Contract Change Notice (CCN).
“Day”	means calendar day.
“Intellectual Property Rights”	means all Registered Intellectual Property Rights, and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know how and trade secrets or equivalent rights or rights of action anywhere in the world.
“Legitimate Commercial Interests”	means an interest the Contractor can demonstrate which is important to its ability to commercially exploit Intellectual Property Rights arising from work performed under the Contract for a defined period of time which includes but is not limited to an economic position vis-à-vis a competitor, loss of profits or survival of an undertaking.
“Member State”	means a State which is Party to the Convention of the European Space Agency in accordance with Articles XX and XXII of the said Convention.
“Participating States”	means a Member or non-Member State participating in a given Agency programme according to Article V.1 (a) and (b) of the European Space Agency Convention.

“Participating State’s Own Public Requirements”

means a public programme in the field of space research and technology and their space applications fully funded or funded to a substantial extent by the Participating State.

“Persons and Bodies”

means any individual, partnership, company, research organisation or legal entity under the jurisdiction of a Participating State which, when relevant, meets the criteria set out in Article II (3) of Annex V to the European Space Agency Convention.

“Progress Payment”

means a payment that is made against:
(a) Successful achievement, certified in writing by the Agency’s representatives, of a milestone defined in the milestone payment plan of a fixed price contract;
(b) Cost reports approved by the Agency in a cost reimbursement contract for a period agreed in the Contract.

“Registered Intellectual Property Rights”

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

“Sub-contractor”

means the economic operator who is under contract to a Contractor of the Agency to provide supplies or services in support of a contract placed by the Agency.

“Third Party”

means a natural or legal person not having signed the Contract.

ARTICLE 1 - SUBJECT OF THE CONTRACT; GENERAL TERMS OF EXECUTION

1.1 The Contractor, as further described in the Statement of Work in Appendix 1 hereto, undertakes to perform [THE TOPIC OF THE ACTIVITY] (all hereafter referred to as “the Work”) and to deliver all the items listed in Article 2 of this Contract.

1.2 The Work shall be performed in accordance with the provisions stated in the following documents, listed in order of precedence in case of conflict:

- a) The specific Articles of this Contract with its PDP Annex;
- b) Appendix 1 hereto: the Agency’s Statement of Work, reference, issue, revision, dated
- c) The signed Minutes of the Negotiation Meeting held on ..., reference ..., issue ..., revision ..., dated ..., not attached hereto but known to both Parties;
- d) The Contractor’s Ariadna Proposal Submission Template, reference ..., issue ..., revision ..., dated ...; not attached hereto but known to both Parties.

1.3 General Terms of Execution

1.3.1 The Contractor’s own sales conditions shall not apply.

1.3.2 The language of this Contract and of all communications hereunder shall be English. The substantive law according to which this Contract shall be construed is [.....].

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

Failing an attempt towards an amicable settlement, all disputes shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or three arbitrators designated in conformity with such Rules. The Arbitration Tribunal shall sit in [City, Country]. The Tribunal’s award shall be final, binding on the Parties and no appeal shall lie against it. The enforcement of the award shall be governed by the rules of procedure in force in the state/country in which the award is to be executed.

1.3.4 The Contractor shall be fully responsible towards the Agency for the proper execution of the Work, [OPTION: if Subcontractors] including any subcontract agreed hereunder. Subcontracts other than those specified in Article 3.1 below are expressly excluded.

The conditions of the subcontracts shall secure for the Agency any rights granted to it under the terms of this Contract.

The Subcontractor shall have the same rights and obligations in relation to the work to be performed under the subcontract that the Contractor has agreed in relation to the Work performed under the present Contract.

Notwithstanding the normal communication lines within the consortium, and the overall responsibility of the Contractor to ensure proper and timely contractualisation and payments throughout the consortium, the Contractor shall ensure that below provisions are duly reflected in all subcontracts entered into for the purpose of this Contract:

Should any Subcontractor encounter serious difficulties in the process leading to:

- (i) timely payment of due invoices (i.e. related to a milestone already achieved) to be made by the Subcontractor's direct customer (i.e. not ESA),
- (ii) contractual coverage of activities already kicked-off,

the said Subcontractor may directly contact the Agency at: indirectpayments@esa.int

In doing so, such Subcontractor shall attach the Standard Contact Form available at: <http://emits.sso.esa.int/emits-doc/ESTEC/Indirect-Payments-Query-Form.docx> properly filled in or provide the same information in the body of the email.

In case any Subcontractor has SME status, as per the definition of SMEs given by the European Commission: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>,

the Contractor shall ensure that the relevant subcontract foresees an automatic grant of a 35% Advance Payment.

The Contractor shall have the responsibility of obtaining the self-certification of the Subcontractor(s) SME status as per certification model provided in the tender documentation.

[END OPTION]

- 1.3.5 Any publicity material prepared by the Contractor related to an activity performed by the Contractor in the context of this Contract shall acknowledge that the activity is/was carried out “under a programme of, and funded by, the European Space Agency”. It shall display the ESA logo if the Agency so requires. It shall also carry a disclaimer stating that the view expressed in such publications can in no way be taken to reflect the official opinion of the European Space Agency.

ARTICLE 2 - DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY

2.1 General

- 2.1.1 Delivery shall be considered as effected only when the relevant deliverable items are in the Agency's possession.
- 2.1.2 Should it seem likely that the originally specified delivery date(s) may be exceeded, the Contractor shall immediately notify the Agency in writing and provide a detailed justification for the delay.
- 2.1.3 No price adjustment in favour of the Contractor will be applicable for the period of delay in delivery.

No penalty to be deducted from the Contract price shall apply in case of late delivery.

Should the Agency conclude that the delays in delivery have impaired the intended objectives of the Work, the provisions of Article 5.5 below shall apply.

- 2.1.4 The Contractor shall be responsible for the appropriate marking, packing, package labelling, insurance, freight, carriage and delivery relative to all deliverable items due hereunder and shall bear any cost relative to all of the above. Deliverable items shall furthermore be packed to guard against loss, damage or deterioration during transport and delivery. If found damaged or defective upon delivery, the Agency reserves the right to return the affected items at the Contractor's expenses.

Should in the execution of this Contract a need arise to provide the Agency with information which is subject to export control laws and regulations, the Contractor shall be responsible to ensure in all cases that such information is passed on to the Agency in strict compliance with the provisions of such export control laws and regulations.

2.2 Acceptance and Rejection

The acceptance by the Agency of the deliverables shall be declared upon verification, by the Agency, that the Work has been performed in compliance with the Agency's requirements and that the required results have been achieved. The said deliverables shall be considered as accepted in the absence of an explicit reaction in respect to the same, by the Agency, within one (1) calendar month counting from the time of submission for acceptance. The provisions of Article 5.5 below shall apply in this respect.

2.3 Deliverable Documents

The Contractor shall, during the performance of this Contract, deliver all documentation and reports specified in Appendix 1, in the format and quantities specified therein.

These shall be sent to the Agency's Technical Officer mentioned in Article 5.1, unless otherwise specified, in accordance with the following specific provisions:

2.3.1 The draft versions of the final documents as defined in section 3.5 of Appendix 1 shall be submitted for approval, in electronic format, to the Agency's Technical Officer specified herein, not later than [...].

The finalised versions thereof shall be issued not later than four (4) weeks after the approval of the draft versions, as specified in Appendix 1.

2.3.2 The Contract Closure Documentation (Appendix 1, Annex A) shall be delivered in one (1) signed set of documentation each, to the Agency's Authorised Representatives not later than the time of submitting the invoice for the Final Settlement (Article 4.1.3 here below).

ARTICLE 3 - PRICE

3.1 The total price of this Contract amounts to:

..... EUR
 (..... Euro)

broken down per Contractor and Subcontractor(s) as follows:

Company Name	ESA Entity Code	Type P/Prime; SI/Subco Indirect	Country (ISO Code)	Total Amount in Euro

The Agency may decide that certain items produced or purchased under the Contract during its implementation (see Article 7 below) shall become ESA Fixed Assets. Such items shall be identified as becoming ESA Fixed Assets through the means of a Contract Change Notice.

The abovementioned price is hereby defined as a Firm Fixed Price and as such, it shall not be subject to any adjustment or revision by reason of the actual costs incurred by the Contractor in the performance of this Contract.

- 3.2 Any amount stated above does not include any added value taxes or import duties in the Member States of the Agency.
- 3.3 The price is stated as being “Delivery Duty Paid” (DDP) for all deliverables, exclusive of import duties and VAT in accordance with the Incoterms® 2010, to the addressee(s) mentioned, or referred to, in Article 5 of this Contract. Reference to the Incoterms® in this provision is exclusively for the purpose of price definition. The price furthermore includes all costs relative to the Contractor’s obligations under Article 2.1.4 above.

ARTICLE 4 - PAYMENTS AND INVOICING

4.1 Payments

Payments shall be made within thirty (30) calendar days of receipt at ESA-ESTEC Finance, Central Invoice Registration Office of the required documents and fulfilment of the requirements specified in Article 4.1.1¹. Only upon fulfilment of these requirements shall the Agency regard the invoice as due.

Requirements to be fulfilled:

4.1.1 Final Settlement:

- Confirmation, submitted by the Contractor with supporting documentation as necessary attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Article 4.2 here below;
- and
- Invoice;
- and
- Delivery, and acceptance by the Agency, of all due items and fulfilment of all other obligations in accordance with the terms of this Contract;
- Signed Contract Closure Documentation using the template provided in Appendix 1, Annex A.

Payments shall be made according to the provisions hereunder:

4.1.2 The Agency shall credit the account of the Contractor to the Contractor's benefit [OPTION: if Subcontractor(s)]

and to the benefit of the Contractor's Subcontractor(s). The Contractor shall be responsible for approving or rejecting, within ten (10) calendar days of receipt, the relevant Subcontractor('s)(s') invoices and related supporting documents (e.g. MACs, Cost Reports). The Contractor shall also be responsible for paying the accounts of its Subcontractor(s), for this Contract, in accordance with the applicable law and normal commercial practice. The Contractor shall indemnify the Agency against any claims arising from such Subcontractor(s), caused by the Contractor's failure to pay the Subcontractor(s). The Contractor shall supply to the Agency, upon request, evidence of payments made to its Subcontractor(s).

[END OPTION: if Subcontractor(s)]

The Agency shall be afforded all the necessary visibility, whether remotely or by means of inspection of the Contractor's [and Subcontractor('s)(s')] premises, in order to ascertain the progress of the Work prior to authorising the relevant payment.

¹ This is reflected in esa-p as "30 days upon receipt by ESA, in esa-p, of both the confirmation and the invoice" see in esa-p GUIDE Frequently Asked Questions & Answers for Suppliers at http://esa-p-help.sso.esa.int/FAQ_for_Suppliers.pdf

- 4.1.3 If applicable, invoices shall separately show all due taxes and/or duties.
- 4.1.4 In the event that the achievement of a milestone is delayed but the milestone is partially met at the milestone planning date foreseen, the Agency may as an exception, effect a payment against an approved confirmation of the partially achieved milestone, not exceeding the value of the Work performed at the date of payment.
- 4.1.5 When releasing the payment for a given milestone, if applicable, the Agency's payment shall be made after due deduction of the corresponding off-set of the Advance Payment(s) as per conditions of Article 4.2 here below.
 In case of partial payment(s), the Agency shall deduct from the corresponding invoice(s) relative to the same milestone any outstanding amount of the Advance Payment(s) still to be off-set.
- 4.1.6 All invoices shall be submitted to the Agency in electronic form through the esa-p on-line system.
- a) The Contractor shall ensure that the APR (if any), all confirmations and all invoices are submitted for payment exclusively through the Agency's esa-p system. If the Contractor has no access to the Agency's esa-p system at the time of signature of this Contract, an immediate request for an esa-p user account shall be made by the Contractor to the ESA Helpdesk (mail to: esait.Service.Desk@esa.int), specifying a contact name, the company name, and the ESA Contract Number.
- b.i) In cases where the Agency's esa-p system is inoperative at the moment of submission of the confirmation, the Contractor may submit the confirmation in paper format in three (3) copies to the Agency's Technical Officer mentioned in Article 5.1.1 a) of this Contract. A template confirmation form can be obtained upon request to esait.Service.Desk@esa.int.
- b.ii) Should the Contractor find the Agency's esa-p system technically inoperative at the moment of submission of the invoices, the Contractor may submit invoices in paper format in five (5) copies to the ESA-ESTEC Finance, Central Invoice Registration Office, together with justifying documentation as required by this Contract.
- c) The Contractor undertakes to complete confirmations and invoices, and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in esa-p.

[OPTION FOR COUNTRIES USING VAT]

**[SUB-OPTION1: VAT Exemption Certificate issued:
 - ESTEC: when non NL Prime in Contract with ESTEC**

- *ESOC: when non DE Prime in Contract with ESOC*
- *ESRIN: when non IT Prime in Contract with ESRIN*
- *ESAC: when non ES Prime in Contract with ESAC*
- *ECSAT: when non GB Prime in Contract with ECSAT*
- *ESEC: when non BE Prime in Contract with ESEC*

In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to the number indicated on the VAT Exemption Form which the Agency provided to the Contractor when forwarding two (2) originals of the present Contract for signature. On invoices submitted via esa-p, the number shall be put in the respective field 'VAT Exemption Number'.

[Sub-Option: for all Establishments when Prime is a Swiss entity]

In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to the "Antrag auf Befreiung von der Mehrwertsteuer" which the Agency provided to the Contractor when forwarding two (2) originals of the present Contract for signature. On all invoices (submitted via esa-p or in hard copy) the following note is mandatory: "von der Steuer befreit" or "Befreiung von der MWST nach Art. 144 MWSTV".

[End Sub-Option]

[END SUB-OPTION1]

[SUB-OPTION2: Exemption under national law:

- *All establishments: when Prime is an IT entity*
- *ESTEC: when Prime is an NL entity in Contract with ESTEC*
- *ESAC: when Prime is an ES entity in Contract with ESAC*

Invoices submitted by the Contractor, which are free of VAT due to the applicable national law, shall make reference to the relevant piece of national legislation as shown below:

- **for Italy:** Law Nr. 358 of 9/6/1977 – Gazzetta Ufficiale Numero 184 of 7/7/1977.
- **for the Netherlands:** Art. 32 No. 4 Uitvoeringsregeling Algemene wet inzake rijksbelastingen.
- **for Spain:** B.O.E. 173 20-7-2012 Art. 11. Furthermore, reference shall be made to the number indicated on the VAT Exemption Certificate, which the Agency provided to the Contractor.

[END SUB-OPTION2]

[END OPTION VAT]

- 4.1.7 Payments shall be made by the Agency in EURO to the account specified by the Contractor. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). The Parties

agree that payments shall be considered as effected by the Agency on time if the Agency's orders of payment reach the Agency's bank within the payment period stipulated in Article 4.1 above.

- 4.1.8 Any special charges related to the execution of payments shall be borne by the Contractor.
- 4.1.9 Any questions concerning the operation of esa-p shall be addressed to the ESA Helpdesk (mail to: esait.Service.Desk@esa.int).
- 4.1.10 Any questions concerning the latest status of due invoices can be addressed to the ESA Payment Officer (mail to: esa.payment.officer@esa.int).



4.2 The following payment plan is agreed for this Contract:

Milestone (MS) Description	Schedule Date	Payments from ESA to (Prime) Contractor (in Euro)	Country (ISO code)
Final Settlement (MS-1): Upon the Agency’s acceptance of all deliverable items due under the Contract and the Contractor’s fulfilment of all other contractual obligations including submission of the signed Contract Closure Documentation.	To + ... months		
TOTAL			

For information purposes only:

For Information purposes only: Amounts in Euro for Contractor and Subcontractor(s)						
Milestone	Insert Prime Contractor	Insert Country (ISO code)	Insert Sub-contractor A	Insert Country (ISO code)	Insert Sub-contractor B	Insert Country (ISO code)
MS 1						
MS 2						
MS 3						
TOTAL						

ARTICLE 5 - SPECIFIC PROVISIONS

5.1 Approval / Representatives of the Parties during Contract Execution

For the purpose of this Contract, the authorised representative of the Agency’s Director General is **Ms/Mr** [Name/Title].

The Agency’s representatives are:

- Technical Officer: **Ms/Mr** (XXX-XXX) for technical matters, or a person duly authorised;
- Contracts Officer: **Ms/Mr** (IPL-PXX) for contractual or administrative matters, or a person duly authorised.

5.1.1 All correspondence for the Agency shall be addressed as follows:

EUROPEAN SPACE AGENCY (ESA),
 The European Space Research and Technology Centre (ESTEC),
 Keplerlaan 1,
 2201 AZ Noordwijk,
 The Netherlands,

a) for technical matters as follows:

	To:	With copy to:	
Name	Ms/Mr	Ms/Mr	Ms/Mr
Telephone No.	+xx xx xxx xxxx	+xx xx xxx xxxx	+xx xx xxx xxxx
Fax No.	+xx xx xxx xxxx	+xx xx xxx xxxx	+xx xx xxx xxxx
e-mail address	@esa.int	@esa.int	@esa.int

b) for contractual and administrative matters (with the exception of invoices as mentioned in 4.1 above) as follows:

	To:	With copy to:	
Name	Ms/Mr	Ms/Mr	Ms/Mr
Telephone No.	+xx xx xxx xxxx	+xx xx xxx xxxx	+xx xx xxx xxxx
Fax No.	+xx xx xxx xxxx	+xx xx xxx xxxx	+xx xx xxx xxxx
e-mail address	@esa.int	@esa.int	@esa.int

5.1.2 Contractor’s Representatives:

The Contractor’s representatives are:

- Technical Officer: Ms/Mr for technical matters, or a person duly authorised;
- Contracts Officer: Ms/Mr for contractual or administrative matters, or a person duly authorised.

All correspondence for the Contractor shall be addressed as follows:

.....,

a) for technical matters as follows:

	To:	With copy to:
Name		
Telephone No.		
Fax No.		
e-mail address		

b) for contractual and administrative matters as follows:

	To:	With copy to:
Name		
Telephone No.		
Fax No.		
e-mail address		

5.1.3 Communications related to the Contract affecting its terms and conditions shall only bind the Parties, if signed by the Agency’s and the Contractor’s duly Authorised Representatives.

5.2 Infringement of the Law – Infringement of Third Party Rights

5.2.1 The Agency shall not be responsible if the Contractor infringes the laws or statutes of its country or of any other country whatsoever.

5.2.2 In the event of a reasonable suspicion of infringement of any patent rights and other Intellectual Property Rights of Third Party, the Work being performed under this Contract shall be stopped immediately. Assessment of the suspicion shall be performed by the Contractor and if confirmed, both Parties shall agree on a new

approach to achieve the objectives of this Contract, either by obtaining the applicable licence(s) from Third Party by the Contractor and/or by signing a Contract Change Notice (CCN) agreed upon between both Parties, in order to avoid the infringement. The purpose of the CCN shall be either to restart the Work, if plausible due under the changed circumstances; or to terminate the Contract, in accordance with Article 5.5.3 hereunder, if the infringement cannot be avoided.

Notwithstanding the above, the Contractor shall indemnify the Agency from and against all claims, proceedings, damages, costs and expenses arising from infringement or alleged infringement of any patent rights and other Intellectual Property Rights of Third Party with respect to the Work under this Contract. This obligation does not extend to infringements resulting from the use of documents, patterns, drawings or items supplied by the Agency or from a modification or combination of the deliverables due hereunder made by the Agency after their acceptance.

5.3 Liabilities

5.3.1 Claims between the Parties in respect of damages to staff and goods occurring during the execution of the Contract shall be settled in the following manner:

5.3.1.1 Claims for injuries, including death, sustained by the Parties' representatives or employees (staff) by virtue of their involvement in the Contract shall be settled in accordance with the Law governing the Contract.

5.3.1.2 Claims for damage caused by one of the Parties to goods owned by the other Party shall be settled in accordance with the Law governing the Contract. The liability of either Party for damage to goods owned by the other Party, except in cases of gross negligence or wilful misconduct, shall however not exceed the amount which is quoted in the Contract as the total Contract price.

5.3.2 Except in case of gross negligence and wilful misconduct, the Parties shall not be liable towards each other for consequential damages sustained by the Parties, arising from and during the execution of the Contract. For the sake of clarity and as an example, consequential damages include, but are not limited to: loss of contract, income or revenue; loss of profit or interests; loss of financing; loss of customer; loss of availability and use of facilities; loss of availability and use of employees' productivity or loss of services of such persons; loss of opportunity; loss of rental expenses.

5.4 Items made available by the Agency

It is not foreseen that the Agency will make any items available to the Contractor.

5.5 Agency's Rights in Case of Contractor's Under-Performance

- 5.5.1.1 Should any of the results of the Work fail to meet the agreed requirements and/or specifications, the Agency reserves the right to reject such results and require their resubmission following an iteration of the relevant work by the Contractor at no additional charge.
- 5.5.1.2 Should any of the results of the Work fail to meet any of the agreed requirements and/or specifications to such an extent as to seriously jeopardise the performance of this Contract and/or to defeat its objectives, the Agency reserves the right to terminate this Contract.
- 5.5.2 Should the Contractor fail to obtain an export authorisation from the competent national authority, the Agency shall have the right to terminate this Contract without further notice.
- 5.5.3 Termination of this Contract as specified above shall entail no compensation being due to the Contractor other than the amounts corresponding to the Milestone Payments already made hereunder at the time of serving of the termination notice. Any amounts corresponding to Advance Payments not entirely offset hereunder shall remain payable to the Agency.

5.6 Changes to this Contract

This Contract does not foresee any changes increasing the scope or price of the Work. Any modification hereto shall, in any case, require the Agency's prior written approval.

ARTICLE 6 - INTELLECTUAL PROPERTY RIGHTS

6.1 Information to be provided by the Contractor – Protection of information

6.1.1 Information, data, reports and results arising from Work performed under this Contract shall be delivered to the Agency. The Agency shall have the right to make such information, data, reports and results available to the Participating States and any Persons and Bodies under their jurisdiction, to use on the terms set forth in the following clauses.

6.1.2 For the purpose of this Contract “Proprietary Sensitive Information” shall mean information corresponding to business related information (e.g. business plans) and/or Intellectual Property Rights vesting in an entity, the uncontrolled dissemination of which is likely to impair the entity’s long-term ability to use and exploit the aforesaid and/or to maintain a competitive advantage.

The Contractor shall not mark any (electronic) documentation as Proprietary Sensitive Information, unless agreed in advance with the Agency. Any request from the Contractor shall be submitted in writing accompanied by an appropriate justification.

6.1.3 Neither Party shall disclose any documentation obtained from the other Party, and which both Parties recognise as being Proprietary Sensitive Information without the other Party’s previous written authorisation. Without prejudice to the foregoing and limited to the purpose and scope of this Contract, both Parties may circulate such documentation to their employees or collaborators that require the said documentation for the sole purpose of complying with, or inspecting the progress of, this Contract.

6.1.4 The obligations provided in Articles 6.1.2 and 6.1.3 shall not apply to (electronic) documentation:

- which at the time of circulation has already entered in public domain or which after circulation enter in public domain other than through a breach of the Contract;
- which at the time of circulation is already known by the receiving party and is not hindered by any obligation not to circulate;
- which is later acquired by the receiving party from another source and is not hindered by any obligation not to circulate;
- which is required to be circulated by law or order of a court of competent jurisdiction.

6.2 Ownership and Use of Intellectual Property Rights

6.2.1 Ownership of Intellectual Property Rights

The Contractor shall own all Intellectual Property Rights and have the right to apply for, and to own, any registered Intellectual Property Rights arising from Work performed under this Contract. He shall as soon as possible report to the Agency any results arising from such a Work which may in its opinion be protected as registered Intellectual Property Rights and state whether he intends to apply for such protection. At the Contractor's specific request in order to allow for filing of patent applications the Agency shall not disclose any relevant information and results for a period of twelve (12) months from the date it was reported to the Agency.

The Contractor shall subsequently inform the Agency of any application to register such results arising from Work performed under this Contract and within two (2) months of the date of filing, provide the Agency with all details on that application. The Agency shall have an irrevocable right to use the information used in that application, for its own requirements on the terms set out in Article 6.2.2 below but, unless agreed otherwise with the Contractor, the Agency shall not disclose such information until publication of the registration application.

6.2.2 Use of Intellectual Property Rights

All Intellectual Property Rights arising from Work performed under the Contract shall be available to:

- a) the Agency, Participating States and Persons and Bodies, to use on a free of charge, worldwide licence, with the right to disseminate and/or to grant sublicences, for the Agency's Own Requirements.

Moreover, the Agency also explicitly reserves the right to widely disseminate any output of the activity, partial or otherwise, both during the execution of this Contract or after its end, without any restriction.

Any output of this activity shall be free of all Proprietary Sensitive Information, which should be provided under separate cover, if necessary. No copyright nor dissemination restrictions shall be indicated.

- b) Participating States as well as any Persons and Bodies under their jurisdiction, to use on "favourable conditions" (i.e. more favourable for the purchaser than market conditions but still allowing reasonable profit for the seller) for Own Public Requirements of such States.
- c) Academic and research institutions within the Participating States to use on a free licence without the right to grant sublicences, for their own scientific research

purposes, excluding commercial purposes and providing the Contractor agrees such use is not contrary to its Legitimate Commercial Interests.

6.3 Background Intellectual Property

6.3.1 Background Intellectual Property - Definition

For the purpose of this Contract, “Background Intellectual Property” means all Intellectual Property, belonging to the Contractor or to a Third Party, which:

- a) has not been generated under contract with the Agency either prior to or during execution of this Contract, and
- b) is relevant to the Work carried out under this Contract, and
- c) the Contractor uses to achieve the objectives of this Contract, and
- d) is delivered to the Agency to enable it to use, operate, copy, distribute and sublicense the deliverable items due under this Contract as specified in the Agency’s requirements, and
- e) is duly identified as such in this Contract.

Conversely, “Foreground Intellectual Property” means all Intellectual Property generated through Work carried out under, or directly or indirectly funded through, this Contract.

6.3.2 Use of Background Intellectual Property

In view of the above definition and of the objectives of the activity covered by this Contract it is explicitly agreed that the Contractor will not use Background Intellectual Property to achieve such objectives.

Nevertheless should the Contractor unilaterally decide to use existing Intellectual Property to achieve the objectives of this Contract, all results of this Contract (or any part thereof) shall be deemed and treated as Foreground Intellectual Property not containing any Background Intellectual Property. The Contractor shall grant to the Agency, and/or ensure that the Agency be granted, all the necessary rights in this respect.

6.4 The free licences provided for the benefit of ESA

The free licences provided on Intellectual Property arising from Work performed under this Contract and/or Background Intellectual Property indicated in 6.3 for the benefit of ESA shall be deemed granted through signature of the present Contract and without the need to implement a separate licence.

6.5 Transfer outside the ESA Member States

Any transfer of Intellectual Property Rights or any product, process, application or result arising from work performed under the Contract by the Contractor to any entity in a non-Member State or any international organisation shall comply with all applicable laws including all export control laws, regulations, rules and procedures and any relevant international agreements relating to the export of goods and services.

ARTICLE 7 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE CONTRACT

The following provisions apply to any items other than those items which fall within the scope of Article 2 of the Contract.

The Contractor shall specify, record, manage and control any and all Customer items and ESA Fixed Assets under Construction (reference is made to Article 3.1 above) that are subject of this Contract. Such items are:

- i. items produced or purchased under the Contract, including electronic components, special jigs, tools, test equipment, and which are paid for under the Contract with an individual or batch value (value of group of items) in the national currency equivalent to, or above five-thousand (5,000) Euro;
- ii. if any, items identified as becoming ESA Fixed Assets in Article 3 above or in a subsequent CCN;
- iii. if any, Customer Furnished Items and/or Items made available by the Agency (see Article 5.4 of the Contract).

The Contractor shall operate an inventory control system of all above mentioned items and shall mark them as falling under this Article of the Contract.

The Inventory Control System shall:

- record the existence, location, operational status and condition of all inventory items, and
- record the value and estimated life duration of all inventory items, and
- record changes in inventory value, and
- enable financial reconciliation to be made and status reports to be prepared for incorporation of the relevant data into the Agency's annual financial accounts.

The Contractor shall, as part of the Inventory Control System, maintain an Inventory/Fixed Asset Record (in an electronic tool of its choice) which shall, as a minimum, contain the information as shown in Appendix 2 to this Contract.

The Inventory/Fixed Asset Record shall be kept updated by the Contractor. It shall be made available to the Agency upon request but as a minimum yearly during the execution of the Contract (and at completion of each Project Phase as per ECSS-M-ST-10 if applicable). A final consolidated record shall be submitted with the final contractual deliverables as foreseen in Appendix 2 to this Contract.

If the Inventory/Fixed Asset Record also includes any of those items which fall within the scope of Article 2 of the Contract, these items are to be clearly set apart.

Items, for which no place of delivery has been identified in Article 2 of this Contract, are subject to the following provisions.

Upon completion of the Work specified in the Contract, the Agency shall take decisions regarding the final destination and final ownership of each item listed in the Record. The Agency shall be free to choose amongst the following options with respect to final destination and final owner of each such item:

- a) the right to claim delivery to the Agency and transfer of ownership (the latter if applicable) - with issue of appropriate instructions concerning packing and shipment (at the Contractor's expense),
- b) the right to claim or retain ownership and to negotiate with the Contractor a loan agreement if the Contractor is interested in keeping and using an item, with loan conditions making the Contractor responsible for the custody, the delayed delivery and the risks involved (at the Contractor's expenses),
- c) the right to extend the custody of an item to the Contractor and to postpone its delivery to the Agency and the associated transfer of ownership – on conditions to be negotiated,
- d) the renunciation of any rights to claim delivery and to claim transfer of ownership, leaving definitively the item in the possession and in the ownership of the Contractor, with or without financial compensation for the Agency (e.g. repurchase by the Contractor) and with or without special instruction,
- e) the right to request the Contractor to dispose of an item on conditions to be negotiated.

Should the Agency decide to transfer an ESA Fixed Asset to a Third Party or to dispose of the Fixed Asset, the Contractor shall provide the full inventory information of the Asset to the Agency and complete the transfer or disposal forms to be provided by the Agency upon request by the Contractor. The information to be given by the Contractor in the forms shall be agreed with the Agency.

The decisions taken by the Agency shall lead to instructions or negotiations, as the case may be and the results shall be recorded in the relevant sections of the Contract Closure Documentation (CCD) as found in Annex A to Appendix 1 to the Contract. The CCD shall not be finalised and signed before a disposition of all items has been given by the Agency and recorded in the documentation.



Done in two (2) originals, one for each Party to this Contract,

In:

In:

On:

On:

For

For the European Space Agency (ESA)

..... [Name]
..... [Title]

..... [Name]
..... [Title]

[OPTION FOR CONTRACTS PLACED UNDER ITALIAN LAW ONLY]
SPECIFIC APPROVAL

The Contractor certifies that he specifically approves the following conditions expressed herein:

- [Art. 1.3.4: Subcontracts]
- Art. 5.2: Infringement of the Law - Infringement of Third Party rights
- Art. 5.3.1: Damage to Staff and Goods
- Art. 5.3.2: Liability for Consequential Damages during the Execution of the Contract
- Art. 5.5: Agency's Rights in case of Contractor's Under-Performance

On behalf of the Contractor,

on this day

..... [Name]
..... [Title]

[END OPTION]

Personal Data Processing Annex

This Personal Data Processing Annex (here in after called “PDPA” or the “PDP Annex”) governs the processing of Personal Data exchanged by the Parties in the frame of the Contract and, as such, it forms an integral part of the Contract. In case of conflict between the terms and conditions of the Contract and the terms and conditions of this Annex, the terms and conditions of this Annex shall prevail.

1. Definitions

For the purpose of this Annex, the Parties agree to the following specific definitions as well as the ones set forth in the ESA Personal Data Protection Framework defined in (8) below:

- (1) **“Agreed Purpose”** (of Processing) means:
 - (i) the performance of the Contract, including implementation, management, monitoring of the work;
 - (ii) management of the relationship of the Parties in relation to the Contract, notably for administrative, financial, audit or for communication purposes.
- (2) **“Agreed Retention Period”** (of Personal Data) means the duration necessary to fulfill the Agreed Purpose of Processing, but in any case no longer than 5 (five) years from the close-out of the Contract.
- (3) **“Agreed Territory”** (of Processing) means the following territories:
 - (i) ESA Member States, as they are listed on the following website http://www.esa.int/About_Us/Welcome_to_ESA/New_Member_States; and
 - (ii) European Union;
 - (iii) countries recognized by the European Commission as ensuring an Adequate Level of Protection of Personal Data under the European Union’s legal framework.
- (4) **“Contractor”** means the natural or legal person who has entered into the Contract with the Agency and which with regards to Personal Data, acts either as a Data Controller or as a Data Processor.
- (5) **“Contractor Personnel”** means Contractor’s employees and as well Subcontractors’ employees.
- (6) **“Contractor Personal Data”** means the Personal Data referred to in Section 3.3 herein.

- (7) **“Controller”** or **“Data Controller”** means any natural or legal person who makes the decision, alone or jointly, to Process Personal Data, or commissions others to Process Personal Data on its behalf. The quality of Data Controller belongs to Party itself as an entity, not to the Party’s personnel who is materially involved in the related activities.
- (8) **“Data Privacy Regulations”** means collectively:
- (i) ESA PDP Framework, i.e. the Personal Data Protection Framework of ESA available on ESA website at the URL http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations
 - (ii) the Personal Data protection laws and regulations applicable to the Agreed Territory of Processing to the extent that these laws and regulations provide an Adequate Level of Protection under the ESA PDP Framework.
- (9) **“Data Protection Incident”** means intentional or unintentional activity which violates the provisions set forth in the Data Privacy Regulations.
- (10) **“Data Subject”** means an individual who is the subject of Personal Data.
- (11) **“Disclosure (or “transfer”) of Personal Data”** (or **“Disclose”**) means any movement of Personal Data, including by copy, by moving Personal Data through a network or from one (1) medium to another (e.g. from a computer hard disk to a server), and/or by rendering remotely accessible Personal Data.
- (12) **“ESA”** or the **“Agency”** means the European Space Agency, including any of its establishments, centres, sites, and any other Agency’s facilities, being identified as Party to the Contract.
- (13) **“ESA Personal Data”** means the Personal Data referred to in Section 3.2 herein.
- (14) **“ESA Personnel”** means ESA employees and as well seconded agents, consultants, experts or employees of Third Parties, as long as these individuals act under an engagement of confidentiality and for which the need to know has been authorised by ESA.
- (15) **“Personal Data”** means any information concerning an identified or identifiable Data Subject, provided that this information can be related to the said Data Subject without unreasonable efforts.
- (16) **“Data Processor”** (or **“Processor”**) means any natural or legal person which Processes Personal Data upon decision of the Data Controller for a specific

purpose. The quality of Data Processor belongs to Party itself as an entity, not to the Party's personnel who is materially involved in the related activities.

- (17) **“Processing” (or “Process”)** means any operation or set of operations performed in particular by electronic means, on Personal Data, such as collection, recording, organisation, storage, retrieval, use, Disclosure, transfer, deletion. It also includes sub-Processing, whenever it is authorized by the Data Controller under Contract.

2. Roles of the Parties

In the performance of the Contract:

- (i) each Party will act as Data Processor of Personal Data submitted to it by the other Party;
- (ii) each Party will act as Data Controller of the Personal Data it submits to the other Party; and
- (iii) when acting as Data Processor, each Party shall process such data solely for the Agreed Purpose.

3. Personal Data exchanged by the Parties

- 3.1 Each Party shall communicate to the other Party only those Personal Data that is strictly necessary for the Agreed Purpose.
- 3.2 As Data Controller, the Agency will communicate to the Contractor only the Personal Data concerning ESA representatives/contact persons including name, work address, email and telephone numbers.
- 3.3 As Data Controller, the Contractor will communicate to the Agency only:
 - (i) Personal Data concerning the Contractor's representatives/contact persons including name, work address, email and telephone numbers;
 - (ii) Personal Data concerning the Contractor's key personnel, including title, name, work address, email, telephone numbers, education, professional experience, description of the persons job and responsibilities and the precise assignment of the person to the activity under the Contract.

4. Data Controller's obligations

- 4.1 The Data Controller is responsible for the collection and update of the Personal Data, for the lawfulness and the quality of the Personal Data and of the means by which they

were collected. Should the legal basis for the collection of the Personal Data cease to exist, the Data Controller will inform the Data Processor without undue delay.

- 4.2 The Data Controller will handle and answer any Third Party(ies) request regarding the Personal Data communicated by the Data Controller, subject to prompt and written notification thereof by the Data Processor.
- 4.3 The Data Controller undertakes to enforce the relevant provisions of the Data Privacy Regulation with respect to audits and to data breaches, involving the Personal Data processed under the Contract as per Section 12 below.
- 4.4 The Data Controller shall ensure, in its area of responsibility, that the level of protection resulting from the Data Privacy Regulations is met.

5. Data Processor's obligations

- 5.1 The Data Processor shall process the Personal Data:
 - (i) in compliance with this PDP Annex and, generally, and the level of protection resulting from the Data Privacy Regulations then in force;
 - (ii) solely for the Agreed Purpose of Processing;
 - (iii) solely in the Agreed Territory;
 - (iv) without exceeding the Agreed Retention period;
 - (v) in such a way as to minimise, by means of suitable preventive security measures, the risk of accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access, or Processing operations that are either unlawful or inconsistent with the Agreed Purpose.
- 5.2 The Data Processor shall promptly investigate any reasonable suspicion of Personal Data Breach and act in accordance with Section 12 below.
- 5.3 The Data Processor shall cooperate with the Data Controller to enable the latter to guarantee to every Data Subject or his/her delegates the possibility to exercise the rights granted to him/her by the Data Privacy Regulations. The Data Processor acknowledges that Data Subject rights shall be exercised only through the Data Controller. Therefore, the Data Processor undertakes to immediately notify the Data Controller of any request that Data Subjects, address directly to the Data Processor, and will not respond to any such request or take any other related action, until authorised by the Data Controller.

5.4 The Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction from the Data Controller infringes any provision on the Processing of Personal Data under the present Agreement.

6. Deletion of Personal Data

Following expiration of the Agreed Retention Period, all Personal Data must be effectively destroyed/deleted, unless required otherwise by the Data Privacy Regulations in the frame of audits, inspections, incidents.

7. Confidentiality

The Parties shall ensure the confidentiality of the Personal Data processed in particular by:

- (i) ensuring that the Personnel, recipients of the personal data of each Party:
 - are properly authorised on a need-to-know basis;
 - have committed themselves to confidentiality or are under a statutory obligation of confidentiality;
 - have received the appropriate personal data protection training.
- (ii) take into consideration, in terms of IT tools, product, applications, the principles of personal data protection by design and by default.

8. Security

The Parties shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purpose of the processing, in order to ensure the following as appropriate:

- the on-going confidentiality, integrity, availability and resilience of processing systems and services;
- measures to protect Personal Data from accidental or unlawful destruction, loss, modification, unauthorised disclosure or access to personal data transmitted, stored or otherwise Processed.

9. Data Protection Officer

As far as required by the Data Privacy Regulation, the Parties shall appoint a Data Protection Officer and communicate the contact details to the other Party.

10. Transfer

Transfer of Personal Data outside the Agreed Territory requires prior written approval of the Data Controller.

11. Sub-contracting

- 11.1 The Contractor is authorised to disclose the Personal Data received by the Agency for the Agreed Purpose and within the scope of the Contract to its Subcontractors indicated in Article 1.3.4 of the Contract. Such Subcontractors will be considered as sub-Processors. All the obligations of the Contractor in its role as Data Processor shall be passed on to the sub-Processors by flowing down these provisions in the respective sub-contracts. The Processing of the Personal Data by the sub-Processors is only allowed for the Agreed Purpose and provided that the Personal Data are not transferred outside the Agreed Territory. Disclosure of the Agency's Personal Data to other sub-Processors requires prior approval of the Agency.
- 11.2 The Agency may engage sub-Processors to support its internal operations that process Personal Data. It is the responsibility of the Agency to ensure that such sub-Processors assume obligations consistent with the Data Privacy Regulations in order to guarantee an adequate level of protection of Personal Data.

12. Personal Data Breaches – Incident Management

In case of any actual or suspected Personal Data Protection Incident falling in the Data Processor's area of responsibility, the Data Processor shall promptly:

- (i) report to Data Controller about it within 48 hours;
- (ii) investigate and inform, in writing, the Data Controller of all stages of Data Processor's investigation as well as on the results thereof:
 - a) if such Incident actually occurred and about the date of occurrence;
 - b) on the causes and the nature of the Incident;
 - c) on the Personal Data which were affected by the Incident;
 - d) on other consequences of the Incident;
 - e) on the measures taken to mitigate the Incident;
 - f) the actions taken to prevent similar Incidents from occurring in the future.
- (iii) coordinate with the Data Controller in any aspect related to complaints (if any) lodged by the affected Data Subject to the Data Processor, in particular provide the Data Controller with reasonable assistance and accurate information about the Incident, in particular (but not only) in case a complaint is, or likely to be, lodged by a Data Subject in relation to the breach;
- (iv) to put in place controls and audits.

13. Law and dispute resolution

The Parties agree that:

- (i) notwithstanding any other provisions on the governing law set forth elsewhere in the Contract, the provisions of the Data Privacy Regulations, as defined herein, will apply and prevail, in case of conflict;
- (ii) notwithstanding any other dispute resolution provisions set forth elsewhere in the Contract:
 - a) any Personal Data-related Incidents or disputes shall be submitted to the independent Data Protection Supervisory Authority established by ESA Council Resolution; and
 - b) the Rules of Procedure for the Data Protection Supervisory Authority, as set forth ESA PDP Framework, shall apply.

14. Duration

This PDP Annex enters into force simultaneously with the Contract. Its terms and conditions will survive the expiration or termination of PDP Annex for as long as the Personal Data are protected by the Data Privacy Regulations.



Appendix 2 to
ESA AO/1-xxxx/xx/XX/XXX/xxx
ESA AO/2-xxxx/xx/XX/XXX/xxx
ESA RFP/3-xxxxx/xx/XX/XXX/xxx
Appendix 1 to
ESA Contract No. 4000xxxxxx/xx/XX/XXX/xxx
P a g e | 1

APPENDIX 1

STATEMENT OF WORK

APPENDIX 2

INVENTORY/FIXED ASSET RECORD

1.1. Content of Electronic Inventory/Fixed Asset Record

The Contractor shall establish an electronic Inventory/Fixed Asset Record with, as a minimum, the following information:

For all items:

- Contract number / subcontract number if applicable
- unique item number
- confirmation that the item has been marked with the unique item number
- description of item
- part number/serial number/type code
- quantity
- system/subsystem
- property owner
- manufacturer
- classification (category – see section 1.2 below)
- acquisition value (i.e. original purchase price or price at Contract signature as applicable)
- date of purchase or production (“in service date” if not corresponding with date of purchase/production)
- in-service date
- foreseen useful life (to be agreed with ESA)
- physical location (e.g. facility, building, room)
- entity responsible for care and custody
- related WBS code or other identifier to be coordinated with the Agency)
- description and date of any change to the property item
- planned method of disposal (if applicable)

In addition to the above, the following information shall be added to those items that are identified as becoming ESA Fixed Assets in Article 3 of the Contract, as applicable.

- Acquisition value
 - revision of this value as a result of change(s) to the asset
- Impairment report of each ESA Fixed Asset remaining in the custody of the Contractor after its acceptance by ESA (using the template that will be provided

by the Agency upon announcement by the Contractor that the item has been impaired)

- date of acceptance by ESA (planned date of acceptance)
- foreseen handling after ESA acceptance (e.g. transfer to ESA, continuing in custody of the Contractor)

1.2. Classification of Inventory/ Fixed Assets items

For the purpose of Inventory/Fixed Asset Control, items shall be classified into five (5) categories, according to the source and intended use of the items, as follows:

Source / Purpose	Supplier-acquired Items	Customer-furnished Items
Consumable items (e.g. parts, materials, supplies)	Class 1	Class 2
Capital items/production support equipment and tools (e.g. instruments, jigs, fixtures)	Class 3	Class 4
Items purchased by the Supplier or his lower tier suppliers on their own account but amortised under the Contract.	Class 5	

Note 1: Consumable items are parts, materials, supplies, components, modules, minor expendable tools, assemblies, units and subsystems which through the production process lose their identity and are absorbed directly or indirectly by the system/product to be provided under the Contract.

Note 2 Consumable items in principle are not capitalised per item, however, before consumption they are identified as assets of the Agency under the collective term “Consumable”.

Note 3: Capital items/production support equipment and tools are jigs, fixtures, devises, apparatus, instruments, machines, installations, technical facilities, buildings, computer programmes, documentation, models, samples or any other item which, after their use in or in conjunction with the production process under the Contract, are expected to have a residual utility or other value for the Agency.

Note 4: Capital items have a useful life of more than one (1) year and are identified as individual items in the Supplier and its lower tier suppliers list of Agency’s assets.