



ESA Contract No. 4000xxxxxx/25/I-LR-bgh

with

[Contractor]

[Title of Contract]

DRAFT CONTRACT

Between:

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

having its seat at: 8-10 rue Mario Nikis, CS 45741, 75738 Paris CEDEX 15, France,
represented by its Director General, Mr Josef Aschbacher,

acting through its establishment:

The European Space Research Institute (ESRIN),
located at: Largo Galileo Galilei 1,
00044 Frascati (RM),
Italy,

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”:



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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.

“Force Majeure”

means an event which is, unforeseeable, unavoidable and external at the time of Contract signature, occurs beyond the control of the affected Party and renders the performance of the Contract impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.

“Intellectual Property Rights”

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 trademarks or equivalent rights and rights of action anywhere in the world.

“Subcontractor”

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 undertakes to perform **[CO to FILL IN THE TOPIC]** (all hereafter referred to as the “Work”), as further described in **APPENDIX 1** hereto, 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;
 - b) **APPENDIX 1** hereto: the Agency’s Living Planet Fellowship activity description;
 - c) The Contractor’s Living Planet Fellowship Outline Proposal, reference ..., issue ..., revision ..., dated ..., not attached hereto but known to both Parties;
 - d) The Contractor’s Living Planet Fellowship Full Proposal, reference ..., issue ..., revision ..., dated dd. ..., **[as amended by the Contractor’s e-mail dated dd. ...]** 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 (1) or three (3) arbitrators designated in conformity with such Rules. The Arbitration Tribunal shall sit in **[City, Country]**. The Arbitration proceedings shall be conducted in English. 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.
- 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.
- 1.3.6 The Contractor shall, in accordance with the Agency’s Policy on the Prevention, Detection and Investigation of Fraud, to the extent allowed by applicable national law, cooperate with the



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Agency's investigation team in any investigation of fraud initiated by the Agency and inform its personnel of their obligation to cooperate accordingly. The Contractor shall ensure that this provision is duly reflected in all subcontracts entered into for the purpose of this Contract.

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.

Penalties for late delivery do not apply, and similarly they will not apply in the subcontract(s) that may be placed by the Contractor.

Should the Agency conclude that the delays in delivery have impaired the intended objectives of the Work, the provisions of Article 5.7 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.

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

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

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

If the delay due to the Force Majeure exceeds three (3) months, the Parties are entitled to terminate the Contract by giving not less than two (2) months' written notice to the other Party, unless the Parties agree to modify the Contract in order to take into account the effects of the Force Majeure.

In case of termination due to Force Majeure, the amount to be paid shall be calculated as per Articles 5.8.2 and 5.8.4. No other payments, compensation or indemnities shall be due by the Agency to the Contractor.

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 5.7 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 4.4 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**.

2.4 Other Deliverables

2.4.1 Software

N.A.

2.4.2 Hardware

N.A.

2.5 Warranty

N.A.

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 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.

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 by means of a Contract Change Notice.

3.2 Any amount stated above does not include any value added taxes ("VAT") or import duties in the Member States of the Agency.

3.3 **[OPTION 1: for EU Prime Contractors]**

The price is stated as being "Delivered Duty Paid" ("DDP") for all deliverables, exclusive of import duties and VAT in accordance with the Incoterms® 2020, to the addressees 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.

[END OPTION 1]

[OPTION 2: for non-EU Prime Contractors]

The price is stated as being Delivered At Place ("DAP") for all deliverables, in accordance with the Incoterms® 2020, to the addressees mentioned, or referred to, in ARTICLE 5 of this Contract. Reference to 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.

[END OPTION 2]

ARTICLE 4. PAYMENTS AND INVOICING

4.1 Payments

Payments shall be made within thirty (30) Days of submission via esa-p to ESA of the required documents and fulfilment of the requirements specified in Articles 4.1.1 – 4.1.3 below¹. Only upon fulfilment of these requirements shall the Agency regard the invoice as due.

Requirements to be fulfilled:

4.1.1 Advance Payment:

- Advance Payment Request (“APR”) (if any): to be submitted after signature of this Contract by both Parties. The Advance Payment constitutes a debt of the Contractor to the Agency until it has been set-off against subsequent milestone(s) as shown in Article 4.2 here below.

4.1.2 Progress Payment(s)²:

- Milestone Achievement Confirmation (“MAC”) (hereinafter referred to as “confirmation”) with supporting documentation, as necessary, submitted by the Contractor and 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.

4.1.3 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.

Payments shall be made according to the provisions hereunder:

4.1.4 The Agency shall credit the account of the Contractor to the Contractor’s benefit.

The Agency shall be afforded all the necessary visibility, whether remotely or by means of inspection of the Contractor’s premises, in order to ascertain the progress of the Work prior to authorising the relevant payment.

4.1.5 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

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.

² For detailed information on how to submit and approve confirmations, invoices and APR in esa-p, you may consult the following two Quick Guides:

http://esa-p-help.sso.esa.int/Quick_Guide_How_to_submit_a_Confirmation_or_Invoice_or_APR.pdf
http://esa-p-help.sso.esa.int/Quick_Guide_How_to_approve_a_Confirmation_or_Invoice_or_APR.pdf.

against an approved confirmation of the partially achieved milestone, not exceeding the value of the Work performed at the date of payment.

- 4.1.6 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 the 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.

- 4.1.7 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) 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 by email to the Agency's Technical Officer mentioned in Article 5.1.1a) of this Contract. A template confirmation form can be obtained upon request to esait.Service.Desk@esa.int.
 - 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 1: for an EU Prime, with the exception of Italy]

In the cases where the Agency provides a VAT Exemption form to the Contractor, it is the obligation of the Contractor to verify that the transaction under this Contract qualifies as an EU Cross-Border Transaction, before applying the VAT Exemption Form. The VAT Exemption Form is only applicable to EU Cross-Border Transactions.

When the VAT Exemption Form is applicable, invoices shall be submitted by the Contractor which are free of VAT, reference shall be made to the number indicated on the VAT Exemption Form. On invoices submitted via esa-p, the number shall be put in the respective field "VAT Exemption Number".

In case the VAT Exemption Form is not applicable, invoices shall be submitted, indicating separately the price and all taxes or duties due.

[END OPTION 1]

[OPTION 2: when Prime is an IT entity]

If applicable, invoices shall separately show all due taxes or duties.

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: Law Nr. 358 of 9/6/1977 – Gazzetta Ufficiale Numero 184 of 7/7/1977.

[END OPTION 2]

[OPTION 3: when Prime is a GB or Norwegian entity]

If applicable, invoices shall separately show all due taxes or duties.

[END OPTION 3]

[OPTION 4: 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 the present Contract for signature. On all invoices, (submitted via esa-p) the following note is mandatory: “von der Steuer befreit” or “Befreiung von der MWST nach Art. 144 MWSTV”.

[SUB-OPTION 4]

- 4.1.8 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.
- 4.1.9 Any special charges related to the execution of payments shall be borne by the Contractor.
- 4.1.10 Any questions concerning the operation of esa-p shall be addressed to the ESA Helpdesk (mail to: esait.Service.Desk@esa.int).
- 4.1.11 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) |
|--|----------------|---|--------------------|
| Progress (MS 1): Upon successful Mid Term Review (MTR) and acceptance of all related deliverable items. | To + 12 months | 50% | |
| Final Settlement (MS 2): Upon the Agency's acceptance of all deliverable items due under the Contract and the Contractor's fulfilment of all other contractual obligations | To + 24 months | 50% | |
| TOTAL | | | |

Advance Payment(s) and other Financial Conditions:

| Prime (P) | Company Name | ESA Entity Code | Country (ISO code) | Advance Payment (in Euro) | Offset against | Offset by Euro | Condition for release of the Advance Payment |
|-----------|--------------|-----------------|--------------------|---------------------------|----------------|----------------|--|
| P | | | | 35% | MS 1 MS 2 | 15% 20% | Upon signature of the Contract by both Parties |

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].

5.1.1 The Agency's representatives are:

- a) **Mr/Ms(EOP-XXX)** for technical matters or a person duly authorised by **him/her** (the "Technical Officer").

All correspondence for technical matters shall be addressed as follows:

| | To: | With copy to: | |
|---------------|--|--|--|
| Name | | | |
| Telephone No. | +xx xx xxx xxxx | +xx xx xxx xxxx | +xx xx xxx xxxx |
| Email Address | @esa.int | @esa.int | @esa.int |

- b) **Mr/Ms(CIC-COE)** for contractual and administrative matters or a person duly authorised by **him/her** (the "Contracts Officer").

All correspondence for contractual and administrative matters (with the exception of invoices as mentioned in ARTICLE 4 above) shall be addressed as follows:

| | To: | With copy to: | |
|---------------|--|--|--|
| Name | | | |
| Telephone No. | +xx xx xxx xxxx | +xx xx xxx xxxx | +xx xx xxx xxxx |
| Email Address | @esa.int | @esa.int | @esa.int |

- c) Personal Data Protection matters shall be addressed to the ESA Data Protection Officer at the following email address:
dpo@esa.int

5.1.2 Contractor's Representatives:

All correspondence for the Contractor shall be addressed as follows:

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

- a) for technical matters as follows:

| | To: | With copy to: |
|---------------|-----|---------------|
| Name | | |
| Telephone No. | | |
| Email Address | | |

b) for contractual and administrative matters as follows:

| | To: | With copy to: |
|---------------|-----|---------------|
| Name | | |
| Telephone No. | | |
| Email Address | | |

c) Personal Data Protection matters shall be addressed to the Data Protection contact point as follows:

| | To: |
|---------------|-----|
| Name | |
| Telephone No. | |
| Email Address | |
| 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.

The Parties agree that electronic signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.

5.2 Personal Data Protection

5.2.1 The Agency shall be a separate Data Controller of the personal data of the Contractor specified in Article 5.1.2, as well as in the Proposal.

5.2.2 The Agency processes Personal Data subject to the ESA PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available at http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations

5.2.3 A Privacy Notice regarding the processing of the Personal Data by the Agency for this processing operation is available at (<https://esastar-publication.sso.esa.int/supportingDocumentation/details/39>)

5.2.4 The Contractor shall share the above-mentioned ESA Privacy Notice, with all Key Personnel whose Curricula Vitae were submitted to ESA.

5.2.5 The Contractor shall be a separate Data Controller of the contact details of the Agency's Representatives as specified in Article 5.1.1.

5.2.6 The Contractor shall process the above-mentioned contact details of the Agency's Representatives subject to the Personal Data protection laws and regulations applicable to the

Contractor (e.g. EU Regulations in the field of personal data protection, including but not limited to the General Data Protection Regulation (Regulation (EU) nr. 2016/679) (hereinafter “GDPR”).

- 5.2.7 The Personal Data exchanged by the Parties in the frame of this Contract will only be processed for:
- a) the performance of the Contract, including implementation, management, monitoring, audits and the fulfilment of the obligations set out in herein.
 - b) the management of the relationship of the Parties in relation to the Contract, notably for administrative, financial, audit or for communication purposes;
 - c) the compliance with any legal or regulatory obligation to which a Party is subject.

5.3 Infringement of the Law – Infringement of Third-Party Rights

- 5.3.1 The Agency shall not be responsible if the Contractor infringes the laws or statutes of its country or of any other country whatsoever.
- 5.3.2 In the event of a reasonable suspicion of infringement of any patent rights and other Intellectual Property Rights of a 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 the 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 (i) restart the Work, if plausible, due under the changed circumstances; or (ii) terminate the Contract, in accordance with Article 5.7.4 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 a 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.

5.4 Liabilities

- 5.4.1 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:
- 5.4.1.1 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.
- 5.4.1.2 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. Except in case of gross negligence or wilful misconduct, the total aggregate liability of either Party for damage to goods owned by the other Party shall not exceed the amount which is quoted in the Contract as the total Contract price.
- 5.4.2 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.

5.5 Customer Furnished Items (CFI)

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

5.6 Items Made Available by the Agency

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

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

5.7.1 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.

5.7.2 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 by giving written notice by registered mail.

5.7.3 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.

5.7.4 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 the termination notice. Any amounts corresponding to Advance Payments not entirely offset hereunder shall remain payable to the Agency.

5.8 Termination without fault of the Contractor

5.8.1 The Agency shall have the right at any time to terminate this Contract either wholly or in part by giving written notice by registered mail. In the case of termination of a Contract by the Agency without fault of the Contractor, the Contractor shall, on receipt of the Agency's instructions, forthwith take the necessary steps to implement them. The Parties shall use their best efforts to mitigate the consequences of the termination. The period to be allowed to implement them shall be agreed between the Parties but shall not exceed three (3) months.

5.8.2 Subject to the Contractor conforming with the instructions referred in Article 5.8.1, the Agency shall take over from the Contractor at a fair and reasonable price all finished parts not yet delivered to the Agency, all unused and undamaged material, bought-out components and items in the course of manufacture in the possession of the Contractor and properly obtained by or supplied to the Contractor for the performance of the Contract, except such materials, bought-out components and items in the course of manufacture as the Contractor shall, with the agreement of the Agency, elect to retain.

5.8.3

- a) The Agency shall indemnify the Contractor against such part of any loss of profit as is attributable to the termination of the Contract and against any damage resulting from the termination of the Contract, in particular against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor and are related to the Contract, in so far as the said commitments, liabilities or expenditure would otherwise, subject to the conditions stated in Article 5.8.1, represent a loss by the Contractor by reason of the termination of the Contract.
- b) The amount of compensation payable under Article 5.8.3a) shall be fixed on the basis of evidence produced by the Contractor and accepted by the Agency. It shall take account of the proportion of the Contract completed and shall be consistent with the provisions of Article 5.8.4

5.8.4 The Agency shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the total price for the Work set forth in the Contract.

5.9 Changes to this Contract

- 5.9.1 The Agency reserves the right at any time to request a change to the requirements covered by this Contract. The Agency may also accept changes proposed by the Contractor. The requesting Party shall communicate all change requests to the other Party in writing through the Parties' Representatives indicated in Article 5.1 above.
- 5.9.2 The cost impact relative to any change resulting from a request, by the Agency, to modify the requirements covered by this Contract shall be borne by the Agency. The Contractor shall be responsible for the consequences and shall bear the cost of any other change.
- 5.9.3 When responding to a change request issued by the Agency or as a means to propose changes to the Agency, the Contractor shall submit a committing change proposal including a detailed quotation of the effects of the change on the contractual Work, price, schedule, deliverable items and any other contractual terms and conditions.
- 5.9.4 Upon evaluation and acceptance by the Agency of a change proposal, any amendment to this Contract shall be introduced in the form of a Contract Change Notice (CCN) according to the CCN form attached in **APPENDIX 2**. In case of rejection, the Agency shall inform the Contractor accordingly, together with the reasons for the rejection.

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 in writing. Any request from the Contractor shall be submitted in writing and 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;
- at the time of circulation is already known by the receiving Party and is not hindered by any obligation not to circulate;
- is later acquired by the receiving Party from another source and is not hindered by any obligation not to circulate; or
- 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. The Contractor 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 it 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 sub-licences, for the Agency's Own Requirements.

For the avoidance of doubt, the term "use" for the purposes of software and/or hardware (design) shall include, but not be limited to, use to operate, integrate, validate, maintain, modify and upgrade items developed under the Contract.

In view of the objectives of this activity, the Agency 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.

- 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 the Participating States' Own Public Requirements.
- c) Academic and research institutions within the Participating States to use on a free licence without the right to grant sub-licences, 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 Article 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 to this Contract. Such items are:

- i. items produced or purchased under the Contract, including electronic components, special jigs, tools, test equipment, 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. Items Made Available by the Agency, if any (see Article 5.5 of the Contract).

The Contractor shall operate an inventory control system ("Inventory Control System") of all the 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 3** 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 1** 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 Inventory/Fixed Asset Record. The Agency shall be free to choose amongst the following options with respect to the final destination and final ownership of such items:

- 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 the item definitively 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 Fixed 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 minutes of meeting.

ARTICLE 8. SPECIAL CONDITIONS OF EXECUTION

A. UNDERTAKINGS OF THE CONTRACTOR

The following provisions shall apply in the case of the Researcher using ESA premises to conduct Research:

- 8.1. Following consultation with the Agency, the Contractor shall be responsible for the management and scheduling of the Researcher's leave, travel arrangements etc.
- 8.2. The Contractor shall be responsible for organising periodic reviews to discuss with the Agency's representatives all matters related to the execution of this Contract. The Contractor shall also arrange ad-hoc meetings, if so required. Minutes of all meetings shall be provided by the Contractor in the number of copies requested by the Agency.
- 8.3. The Researcher shall not have the authority to sign documents on behalf of the Agency.
- 8.4. The present Contract shall not affect the legal relationship between the Contractor and the Researcher. The Agency's relationship with the Researcher shall be material only, there being no contractual relationship between the two.
- 8.5. Legal Compliance
 - 8.5.1. The Contractor undertakes to comply with all relevant laws, decrees, rules and regulations related to the Researcher working on the Agency's premises under the Contract (such as, but not limited to safety, insurance and health).
 - 8.5.2. In the cases where said laws, decrees, rules and regulations imply an obligation to be directly fulfilled by the Researcher (such as, but not limited to, medical insurance), the Contractor undertakes to enforce such laws, decrees, rules and regulations towards him/her.
- 8.6. Health and Safety
 - 8.6.1. The Contractor shall be responsible for ensuring compliance of the Researcher to all applicable health and safety rules and regulations.
 - 8.6.2. The Agency, as an international organisation, reserves the right to define its own measures/procedures for health, safety and environment and the Contractor and the Researcher shall comply at no additional cost for the Agency.
 - 8.6.3. The Researcher shall:
 - a) act in a way which promotes health and safety and does not endanger their own safety and health or that of others;
 - b) use facilities, equipment and substances as instructed;
 - c) use provided safety measures (e.g., personal protective equipment) properly;
 - d) refrain from disconnecting, changing or removing arbitrarily safety devices fitted, e.g., to machinery, apparatus, tools, plant and buildings, and use such safety devices correctly;

- e) immediately report any situation in the workplace where they have reasonable grounds to suspect a serious and immediate danger to safety and health or any shortcomings in the protection arrangements;
- f) report unplanned events such as accidents, incidents and near misses, according to local arrangements in place at the operations location;
- g) cooperate with management initiatives to protect the safety and health of themselves and others;
- h) participate to H&S training as required by host nation regulation;
- i) take any other measure as required by local arrangements of the place of operation location;
- j) cooperate with management initiatives to protect the safety and health of themselves and others.

8.6.4. The officer responsible for safety at the relevant site shall have the right to carry out safety inspections without prior notice. Such inspections shall not unreasonably disrupt the normal activities of the Researcher.

8.6.5. The Contractor and its personnel shall report any infringements of the health and safety regulations, including wilful misuse of safety equipment, by the Contractor in writing to the health and safety office of the relevant site. The Contractor shall take appropriate measures to ensure future compliance with such norms.

In the event of serious infringements of the regulations, and in consultation with the Contractor, the Agency may prohibit the entry onto its site(s) of the Researcher concerned. The consequences of such prohibition shall be borne by the Contractor.

8.7. Working Hours

Unless anything is stipulated to the contrary, either explicitly or implicitly, work under the present Contract shall be performed at the Agency's premises during normal working hours and days. A listing of all twelve (12) official ESA holidays shall be provided to the Contractor at the beginning of each calendar year.

8.8. Security Requirements

8.8.1. The Contractor, and its personnel employed for the performance of the Contract shall comply at any moment in time with the ESA Security Directives in the latest applicable version provided by the Agency (Appendix 4), specifically with respect to the provisions concerning physical, personnel, Information protection and ICT security.

8.8.2. The Contractor shall certify that it and its personnel working at the Agency's premises, i.e. the Researcher, have read or will read before taking up duty, the above-mentioned provisions of the ESA Security Directives and that it and its personnel shall comply with these rules, including attendance to the related mandatory trainings provided by ESA to on-site personnel. In this regard, the Agency requires all Contractor personnel to sign the 'Declaration of compliance' (Appendix 5).

8.8.3. The personnel security requirements may change over time to reflect changing assignments or access to information which requires a defined level of protection (including export-controlled information).

- 8.8.4. Failure to achieve compliance with the personnel security requirements, either at initial deployment of the Contractor's personnel or at any later stage when required, will lead to the review of an individual's involvement in the activities, may lead to denial of access on-site or access to ESA IT tools and information, may lead to the termination of any further involvement within the activities performed in the frame of the Contract and, ultimately, it may lead to the termination of the Contract.
- 8.8.5. The Contractor is responsible for the execution of a basic security screening of the Contractor's personnel working on-site the Agency's premises and shall commit to fully cooperate in case additional screening has to be performed due to more stringent security requirements imposed during the execution of the Contract.

Such basic security screening shall be completed before the personnel starts working under the Contract and at the latest at take up duty on the Agency's premises, and shall consist of at least the following verifications:

1. Identity verification: copy of valid ID card or passport of concerned personnel.
2. Verification of authenticity of diplomas, degrees and/or certificates:
 - a. Obtain a certified copy of the relevant diploma, degree or certificates.
 - b. Contact the relevant university or school to verify that the concerned personnel obtained his/her diploma, degree or certificate there.
3. Contact the referees or previous employers provided for references.
4. Request the Contractor's personnel concerned to produce a formal statement of good conduct, issued by an official government instance, or – should local law not foresee/permit this – he/she shall sign a statement of non-conviction and good conduct in a form of a self-certification (template in Appendix 6).
In the event that the formal statement of good conduct is not available at take up of duty time, the Contractor's personnel shall be required to sign a statement of non-conviction and good conduct in a form of a self-certification (template in Appendix 2). Once the formal statement of good conduct is delivered, the Contractor shall send to ESA the updated Security Screening Verification Sheet (Appendix 7).
5. The Security Screening Verification Sheet (Appendix 7) shall list all of the verifications made and the date of verification.
6. The Security Screening Verification Sheet (Appendix 7) for each individual shall be sent by surface or electronic mail addressed to the attention of the ESA's Technical Officer indicated in the Contract. The level of protection of the Security Verification Sheets within ESA will be corresponding to "ESA Unclassified – For ESA Official Use Only – Contains Personal Data". All other documents related to the basic security screening shall be kept at the Contractor's premises and shall be made available to the Agency upon request as such files are auditable by the ESA Security Office.

8.9. Access to ESA premises

- 8.9.1. All personnel employed by the Contractor under this Contract, who need to enter the Agency's premises in order to render the services in the frame of this Contract, shall be issued with an access badge by the Agency. This badge must be visibly carried by the personnel concerned on entering and leaving the Agency's site and at all times when the personnel are present on-site.

The Contractor shall supply to the Agency a complete list of all personnel employed under the frame of the Contract and all relevant information to enable the Agency to identify the personnel concerned. This list shall be countersigned by the Agency's Technical Officer and any changes shall be notified by the Contractor in writing five (5) working days before the change takes place.

- 8.9.2. Card keys, access badge, keys and similar items have to be kept safe. Loss of such items shall immediately be reported to the security officer at the relevant ESA site. The Agency reserves the right to charge the Contractor for the loss sustained. Misuse of keys, badges or card keys will be treated as a breach of the Security Directives.
- 8.9.3. It is the responsibility of the Contractor to ensure that when its personnel leave ESA premises, they return any ESA property issued to them, including but not limited to access badge, car stickers, card keys, pocket calculators, fans, keys etc. A statement of receipt must be signed by the relevant site services before the personnel leaves. A receipt form can be obtained from site services. For every identity card not returned in accordance with these conditions, a retention fee of EUR 100 will apply.

All visitors to the Contractor on an Agency site, including the Contractor's personnel not employed in relation to this Contract, shall complete the formal visitor procedure at each site.

8.10. Confidentiality

- 8.10.1. The Agency requires all Contractor personnel to sign the 'Non-Disclosure Undertaking' (Appendix 8) and to respect the confidentiality thus agreed to at all times. The 'Non-Disclosure Undertaking' is also intended to restrict the disclosure of this information to the Contractor personnel's own employer.
- 8.10.2. The originals of all signed Non-Disclosure Undertakings shall be provided to the Agency's Technical Officer upon request. Copies thereof shall be kept in the Contractor's files.
- 8.10.3. The Contractor shall make sure that all Contractor personnel selected to work on-site under this Contract notify in writing the Agency's Technical Officer prior to start of the work in case of any possible Conflict of Interest, as defined in Article 15 of the ESA Contracting Regulations.

8.11. Use of ESA communication facilities and software

8.11.1. Use of ESA communication facilities

- 8.11.1.1. The Contractor's personnel shall use the ESA communication facilities (e.g. telephone, fax, email etc.) exclusively for purposes covered under this Contract.
- 8.11.1.2. The Contractor agrees to comply with and shall ensure that its personnel comply with all restrictions, regulations, policies and requirements designed to protect the Agency's information, its computing resources and its reputation. In particular, the Contractor and its personnel shall adhere to the instruction "ESA IT acceptable use policy" which is an integral part of the present document.
- 8.11.1.3. On-site Contractor personnel using ESA communication facilities shall in particular:
- Ensure that their use of the service is wholly consistent with the purpose of the Contract.

- b) Ensure that all communications are clearly marked with the name of the company they work for.
- c) Ensure that their use of the service does not bring the Agency into disrepute.
- d) Comply with the Agency's Information Security rules and procedures (for example, by scanning all files copied from the Internet for viruses using tools provided by the Agency for this purpose).
- e) Notify immediately the ESA Computer and Communication Emergency Response Team (ESACERT), of any actual or suspected security threat to the Agency's automation resources.

8.11.1.4. The Agency's System Administrator may access and view any electronic mail in the ESA email account if this is necessary when investigating or correcting an operational problem or carrying out a random check in order to verify the correct use of access to internet. Consequently, the Agency shall not guarantee the privacy or confidentiality of the correspondence and use of the internet access service by the Contractor's personnel.

8.11.2. Use of software

8.11.2.1. If the Contractor or its personnel use software provided by the Agency, the required check (to be executed by the Contractor), with the proper care normally used in the field, shall include running the software through any virus checker specified by the Agency.

8.11.2.2. The Contractor shall not pass any software supplied by the Agency, or copy thereof, to any other party, including staff members of the Agency, unless expressly authorised by the Agency's Technical Officer.

The Contractor shall not use any software, not obtained from the Agency, unless he has a contractual right to use it, or it is in the public domain. If the software is supplied by the Agency, the Contractor may assume that the Agency has such a contractual right, unless he has good reason to believe, or the Contractor knows, otherwise. In the latter case the Contractor shall notify the Agency's Contracts Officer.

8.11.2.3. The Contractor shall be responsible for any damage to the Agency's computing facilities due to the wilful or negligent use of software contaminated by a virus.

8.12. Should the work of the Researcher be cancelled upon the Contractor's initiative, the Contractor shall give the Agency a prior notice of three months. During the notice period work shall continue normally.

8.13. At the end of the notice period the Researcher shall produce and deliver to the Agency a report summarising all work done up to that point.

8.14. The Contractor undertakes to take appropriate insurance cover for itself and specifically for any of its personnel working on-site at ESA premises in regard to their liability hereunder. Any such insurance shall include a provision of non-recourse against the Agency or its agents, with the exception of gross negligence and wilful misconduct. The Contractor shall indemnify the Agency against failure to include such a provision.

B. UNDERTAKINGS OF THE AGENCY

- 8.15. The Agency shall provide the following to the Researcher, upon confirmation that their presence at ESA premises has been authorised:
- Access to the relevant ESA premises;
 - Office accommodation and office facilities;
 - Access to the usual office software, such as but not limited to MS Office;
 - Use of facilities on-site, such as restaurant, recreational facilities, Travel Agency;
 - Use of other facilities, such as laboratories;
 - Proper registration of the Researcher on the relevant ESA premises.
- 8.16. The Agency shall provide scientific and technical direction to the Researcher in respect of matters under the present Visiting Research Agreement.

Electronically signed by the Parties to this Contract,

| | |
|-------------------------------|-------------------------------------|
| In: | In: Frascati |
| On: | On: |
| For | For the European Space Agency (ESA) |
| | |
| [Name] [Title] | [Name] [Title] |

[OPTION FOR CONTRACTS PLACED UNDER ITALIAN LAW]
SPECIFIC APPROVAL

The Contractor certifies its explicit approval of the following conditions expressed herein:

- Art. 5.3: Infringement of the Law - Infringement of Third Party rights
- Art. 5.4.1: Damage to Staff and Goods
- Art. 5.4.2: Liability for Consequential Damages during the Execution of the Contract
- Art. 5.7: Agency's Rights in case of Contractor's Under-Performance

On behalf of the Contractor,

on this day

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

[END OPTION]



Appendix 2 to
ESA CFP/5-xxxxx/25/I-LR-bgh
Appendix 1 to
ESA Contract No. 4000xxxxxx/25/I-LR-bgh

APPENDIX 1

LIVING PLANET FELLOWSHIP ACTIVITY DESCRIPTION


APPENDIX 2

CONTRACT CHANGE NOTICE

For submission of a change, the Contractor shall submit its proposal in the format of a CCN using the cover page included below. The form shall be filled with the following information as a minimum:

- The Contractor's name and the ESA Contract number;
- The title of the area affected by the change (Work Package reference, new work, etc.);
- The name of the initiator of the change (Contractor or ESA);
- The description of the change (including Work Package Descriptions, Work Breakdown Structure);
- The reason for the change;
- The price breakdown in Euro (€), if any (breakdown by company, Phase, etc., including PSS A2 and PSS A8 forms);
- The Milestone Payment Plan for the CCN, if any;
- Effect on other Contract provisions;
- Start of Work - end of Work (including contractual delivery dates and overall planning, milestones, etc.);
- A CCN Form, as per the format below, signed by the Contractor's representatives.

The Contractor shall, on request of the Agency, provide additional documentary evidence. At the request of either Party, the proposed change may be discussed at a Change Review Board, consisting of both the Contracts Officer and the Technical Officer of each Party.

| | | | |
|---|----------------------|--|--|
|  | DIRECTORATE: | Contractor: | |
| | | ESA Contract No.: 4000XXXXXX/xx/XX/XXX/xxx | |
| CONTRACT CHANGE NOTICE No. | | DATE: | |
| TITLE OF AREA AFFECTED (WORK PACKAGE ETC): | WP REF: | | |
| | INITIATOR OF CHANGE: | | |
| DESCRIPTION OF CHANGE | | | |
| REASON FOR CHANGE | | | |
| PRICE BREAKDOWN (Currency)/PRICE-LEVEL | | | |
| EFFECT ON OTHER CONTRACT PROVISIONS | | START OF WORK | |
| | | END OF WORK | |
| CONTRACTOR'S PROJECT MANAGER: | | CONTRACTOR'S CONTRACTS OFFICER: | |
| DATE: | | DATE: | |
| [DISPOSITION RECORD OR OTHER AGREED CONDITION RECORDED WITH THE CCN APPROVAL] | | | |
| ESA TECHNICAL OFFICER: | | ESA CONTRACTS OFFICER: | |
| DATE: | | DATE: | |

APPENDIX 3

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’s 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 are in principle 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, devices, 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's and its lower tier suppliers' list of Agency's assets.

APPENDIX 4

ESA HEALTH AND SAFETY POLICY AND ESA SECURITY REGULATIONS

For Services on-site the Agency premises the following conditions apply:

The Contractor and its personnel, shall adhere to:

- the ESA Health and Safety Policy, which are available at <https://esastar-publication.sso.esa.int/supportingDocumentation/details/33>,

and

- the ESA Security Regulations, which are available at https://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations

APPENDIX 5

DECLARATION OF COMPLIANCE

[COMPANY'S LETTERHEAD]

ESA CONTRACT NO. 4000xxxxxx/25/I-LR-bgh

DECLARATION OF COMPLIANCE

WITH

- ESA Health and Safety Policy, which is available at <https://esastar-publication.sso.esa.int/supportingDocumentation/details/33>;
- ESA Security Regulations, which are available at https://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations;

I,[Name], an employee of [insert Contractor's name],

hereby declare that I have read and understood the above-mentioned Policy and Regulations. I shall keep myself informed of the up-to-date versions of these Policy and Regulations and shall comply with them.

(Signature of Contractor's employee) (Place and Date)

Name and function

APPENDIX 6**ESA SELF-CERTIFICATION - STATEMENT OF NON-CONVICTION AND GOOD CONDUCT**

The undersigned..... born in
.....,
(name, first name) (place + country)

on
(date, DD/MM/YYYY)

herewith officially declares that

- ☐ he/she has never been convicted by a court of law of his/her State nor by a court of law of any other State;
- ☐ he/she has been convicted by a court of his/her State, or any other State;
- ☐ he/she does not have an on-going criminal procedure with the court of law of his/her State or with the court of law of any other State.

Date:.....

Place:.....

Signature:.....

APPENDIX 7

ESA HEALTH SECURITY SCREENING VERIFICATION SHEET

This sheet presents the verification results related to:

(Name of Contractor's staff)

Working for under ESA Contract (reference number):

4000XXXXXX/25/I-LR-bgh

| Verification | Date of Check/receipt of Security Directives | Status (fill in "OK" or attach a separate note in case of negative findings) |
|-----------------------------------|--|---|
| Identity verification | | |
| Diploma or Degree Verification | | |
| References from previous employer | | |
| Statement of Good Conduct | | <input type="radio"/> No findings <input type="radio"/> Self-certification |
| Security Directives | | |

Name and title of Contractor's representative (identified in the Contract):

.....

Signature:

.....

Date of Signature:

.....

APPENDIX 8

NON-DISCLOSURE UNDERTAKING

I, **[insert full name]**an employee of **[insert Contractor's name]** (the "Contractor"), assigned by my employer to carry out work under the ESA Living Planet Fellowship Contract No. **4000XXXX/25/I-LR-bgh** (hereinafter "the Contract") having been informed that in accordance with the above-referenced Contract, all documentation and other information of whatever kind and nature, to which I have access in connection with the Contract, including also but not limited to documentation and other information supplied or disclosed directly or indirectly by the Agency or any entity or person cooperating with the Agency as well as all documentation and information produced by the Contractor and/or the Contractor's personnel or the Agency or any entity or person cooperating with the Agency (together called the "Material"), is deemed to be "ESA Proprietary Information", even if not marked as such, (unless stricter security standards apply as specified in the Contract), hereby undertake as follows:

1. Not to use, copy or reproduce or permit the use, copying or reproduction of any Material, which is not publicly available, other than for, and in compliance with, the use expressly authorised to the Contractor, by the Contract, and I further undertake not to provide nor disclose nor permit the use, provision or disclosure orally or otherwise, either directly or indirectly of any of the Material nor any copy, summary or extract thereof to any party other than to:
 - a) Other employees or representatives of the Contractor assigned to carry out work in connection with the Contract, who have a need to know for purposes of the Contract.
 - b) The relevant staff of the Agency or other Contractors' staff concerned with the Contract, who have a need to know for purposes of the Contract.
 - c) Any other person so duly nominated in writing by the Agency, who has a need to know for purposes of the Contract.

Any such disclosure according to a), b) and c) above shall be made in confidence and shall extend only as far as necessary for the purpose of the Contract and in full compliance with the "Instruction for the common protection of Unclassified Programme/Project Information".

I undertake not to disclose such Material at all times and acknowledge that my obligation also restricts the disclosure to my own employer, i.e. the Contractor.

2. Upon termination for any reason of my involvement in the Contract, to hand over to the Contractor's Service Manager all the Material including all copies or reproductions thereof in my possession at the time of such termination.
3. Not to use nor to disclose nor to communicate either directly or indirectly to any party any other information whether written or oral acquired during the course of the Contract, except with the prior written consent of the Contractor's Service Manager. The information subject of the above, does not include information already publicly available. **→ THE EUROPEAN SPACE AGENCY**

4. Not to use, without the prior written consent of the Contractor's Service Manager, any of the Material or other information except for the purpose of the proper execution the Contract.
5. Should the performance of my work under the Contract require processing of personal data, I undertake to comply with the ESA Personal Data Protection Framework.
6. Further, I undertake to:
 - refrain from any use of the Agency's shared drives, DMS and databases except to the extent necessary to store and use all files created or modified in the course of my work under the Contract,
 - make all the data I will be handling/creating/modifying accessible at all times to the Contractor's Service Manager, independently from the username,
 - make available to the Contractor's Service Manager, all deliverables I have been working on, with a frequency consistent with the planning set forth in the Contract and, in any case, at the end of my work under the respective Work Package(s).
7. By signature of the present Undertaking, I give ESA's System Administrator authorisation for the duration of my work under the Contract to access and view my ESA electronic mail, in line with ESA policy in this matter.
8. I herewith declare that I remain under the authority of my employer (i.e. Contractor) and I undertake to refrain from any behavior that could create any ambiguity with regard to my position as employee of the Contractor. In particular, I shall not make any legally binding commitment or declaration on behalf of ESA, whether it be the signing of contracts with external entities, the acceptance of deliverables to ESA or any other legally binding commitment or declaration on behalf of ESA.
9. Whenever the Agency's consent or approval is required, such consent or approval shall be communicated to me in writing exclusively by the Contractor's Service Manager.
10. I am aware of the fact that in case of a violation of any of my above undertakings, the Agency reserves the right to proceed as follows:
 - make a joint assessment of the facts together with the Contractor.
 - the Contract or, at the Agency's discretion, the parts thereof, under which I am working, may be terminated by the Agency with immediate effect. In this case, no indemnification for terminating the Contract shall be paid to the Contractor.
 - my access to ESA premises may be denied.
 - any damage resulting from this violation, which is caused to the Agency and/or any third party, shall be compensated by the Contractor at the Agency's request.
 - to take any other steps as deemed appropriate in accordance with the Contract.
11. All rights and obligations resulting from this Non-Disclosure Undertaking shall continue also after the end of my involvement in the Contract.



Appendix 2 to
ESA CFP/5-xxxxx/25/l-LR-bgh
Appendix 8 to
ESA Contract No. 4000xxxxxx/25/l-LR-bgh

Researcher's
Name _____

Signed _____

Date/Place _____

Researcher's
supervisor _____

Signed _____

Date/Place _____