



REGULATIONS OF THE EUROPEAN SPACE AGENCY

General Clauses for the ESA Initial Support for Innovation (Pilot Phase)

Ref. No. ESA-IPL-P-REG-2020-0001

Issue 1.0

The General Clauses (GC) for the ESA Initial Support for Innovation (EISI) of the European Space Agency (ESA) apply to EISI Agreements placed by ESA during the Pilot Phase (as defined below).

Their applicability is defined in Part I, Clause 2.

These EISI GCC are issued by the European Space Agency in application of the Resolution on the ESA Initial Support for Innovation (ESA/C(2020)6) adopted by ESA Council on 18 December 2019. Under the above-mentioned Resolution, the Pilot Phase lasts until end of 2021, unless its duration is extended by the ESA Council.

GENERAL CLAUSES (GC)
FOR THE ESA INITIAL SUPPORT FOR INNOVATION (EISI)
(PILOT PHASE)

TABLE OF CONTENTS

PART I GENERAL PROVISIONS

Clause 1	Definitions
Clause 2	Applicability
Clause 3	Languages
Clause 4	Signature of the EISI Agreement – Entry into force
Clause 5	Parties’ Representatives

PART II Performance of the EISI Agreement

Clause 6	General conditions of performance
Clause 7	Controls, checks and audits
Clause 8	Subcontracting - Assignment
Clause 9	Amendments
Clause 10	Time limits – Reporting – Hardware
Clause 11	Funding - Payments
Clause 12	Termination
Clause 13	Liability
Clause 14	Compliance with statutory and other obligations

PART III Intellectual Property Rights – Proprietary Information

Clause 15	Intellectual Property Rights
Clause 16	Infringement of Third Party Rights
Clause 17	Proprietary Information - Disclosure
Clause 18	Use by the Agency of non-Proprietary Information
Clause 19	Use of the Agency’s name, acronym or logotype - Publicity

PART IV Applicable law and Dispute resolution

Clause 20	Applicable law
Clause 21	Dispute resolution

Annex 1 EISI Cost Audit and Eligible Costs

Annex 2 Personal Data Protection

PART I GENERAL PROVISIONS

CLAUSE 1 : DEFINITIONS

Beneficiary	means the economic operator who has entered into an EISI Agreement with the Agency.
Communication Material	has the meaning given in Clause 19 .
EISI	stands for “ESA Initial Support for Innovation” and means the firm fixed amount awarded by the Agency under the EISI Agreement to a Beneficiary to provide an initial support for a specific Project and not as counterpart for a service or a deliverable.
EISI Agreement	means the written agreement between the Agency and the Beneficiary which formalises the particular EISI terms and conditions and awarding a fixed amount to the Beneficiary.
EISI GC	stands for “EISI General Clauses” and means the present document.
EISI Resolution	means the Resolution on the ESA Initial Support for Innovation (ESA/C(2020)6) adopted by ESA Council on 18 December 2019 and made public on www.esa.int .
Parties	means the parties signing the EISI Agreement.
Third Party	means a natural or legal person not having signed, directly or by representative, the EISI Agreement.
Procurement Regulations	means the ESA document ref. ESA/REG/001, rev. 5 and available on www.esa.int .
Project	means the work programme proposed by the Beneficiary and covered by EISI Agreement.
Proprietary Information	has the meaning given in Clause 17 .
Force Majeure	means an event which is unforeseeable, unavoidable and external at the time of the EISI signature, occurs beyond the control of the affected Party and renders the performance of the project 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, knowhow and trade secrets or equivalent rights or rights of action anywhere in the world.

CLAUSE 2 : APPLICABILITY

The present EISI GC shall apply to the EISI Agreements placed by the Agency insofar as not stated otherwise in the relevant EISI Agreement.

CLAUSE 3 : LANGUAGES

The EISI Agreement shall be drawn up in English unless specific legislation imposes the use of French.

The communication between the Parties in connection with the EISI Agreement and its performance shall be in English.

CLAUSE 4 : SIGNATURE OF THE EISI AGREEMENT - ENTRY INTO FORCE

4.1 Signature

The EISI Agreement shall not bind the Agency unless signed by its Director General or his/her authorised representative.

The Agency may require that EISI Agreement be signed using an electronic signature. In such case, the Parties agree that the electronic signature shall be considered equivalent of the handwritten signature, valid and expressing consent for the EISI Agreement to be legally binding to such Party and to serve as evidence on the same account as a hand-signed document.

Unless electronic signature is requested by the Agency as mentioned above, the parties shall sign the EISI Agreement in paper originals, one for each Party.

4.2 Entry into force

The EISI Agreement enters into force upon its signature by the Parties.

CLAUSE 5 : PARTIES' REPRESENTATIVES

The Parties representative(s) shall be identified in the EISI Agreement or notified in writing to the other Party.

The Beneficiary shall identify the person responsible for the implementation of the Project.

The Agency will nominate representatives for the purpose of inspections and audits.

PART II PERFORMANCE OF THE EISI AGREEMENT

CLAUSE 6 : GENERAL CONDITIONS OF PERFORMANCE

- 6.1 The Beneficiary shall perform the Project with the level of skills, care and diligence to be displayed by a professional and in accordance with the requirements of the EISI Agreement.
- 6.2 The Beneficiary shall, in accordance with any applicable health and safety regulations and, as applicable, security regulations, give the Agency's representatives access to his premises and give all other necessary assistance for the Agency's representatives to perform their tasks as described in **Clause 7**.
- 6.3 If the EISI Agreement expressly provides that certain tasks are to be performed from the Agency's premises, then:
 - a. the Agency shall, for such purpose, provide the Beneficiary's personnel reasonable access to such premises during the Agency's normal business days and hours;
 - b. the Beneficiary shall comply with the Agency's health, safety or security policies and procedures in force on the premises where the tasks are to be performed.
- 6.4. The Agency may agree to make available to the Beneficiary's personnel, at the Beneficiary's own risk, office equipment, stationary and other hardware and access to facilities as identified in the EISI Agreement.

CLAUSE 7 : CONTROLS, CHECKS AND AUDITS

- 7.1 The Beneficiary's compliance with its obligations under the EISI Agreement may be subject to management control, checks and/or audits, including the following:
 - a. the Beneficiary's performance of the Project;
 - b. the accuracy and truthfulness of any information or document provided by the Beneficiary to the Agency to support the legal, financial and operational capacity as per Article 18 of the Procurement Regulations, applicable mutatis mutandis;
 - c. the achievement of the objectives and results pursued through the Project;
 - d. the costs and compliance with the financial conditions.
- 7.2 Audits may be carried out during the implementation of the Project or afterwards, up to five (5) years after final payment. Such cost audits may be

performed by Agency representatives or by external auditors appointed by the Agency to perform this task on its behalf.

- 7.3 Audit shall be performed in accordance with the procedure defined in **Annex 1** hereto.
- 7.4 The Beneficiary shall keep the necessary records and other documentation, shall provide the reasonable assistance and access to premises to enable the performance of audits and shall make available such records and supporting documents upon the first request of the Agency's representatives or its appointed auditors.
- 7.5 Pursuant to the audits, the Agency may take any appropriate measures, including any of the following ones: withhold payments, reduce the EISI amount, issue a recovery request with respect to the amounts unduly paid, request amendment of the EISI Agreement, deduct the due sums from any other agreement/contract (s) with the Agency, or other proportionate measures. These measures shall be applied after having afforded the EISI Beneficiary the possibility to submit written observations. Upon the Agency's request, the Beneficiary shall implement a remedial plan in accordance with the agreed timetable and shall confirm its completion by a notice in writing to the Agency.
- 7.6 In addition, if the Agency agrees with audit findings which state that the Beneficiary's controls or performance are unsatisfactory, the Agency has the right to terminate the EISI Agreement for breach upon notification.
- 7.7 The Beneficiary shall flow down the above provisions on audits over the sub-contractors (if any).

CLAUSE 8 : SUBCONTRACTING - ASSIGNMENT

8.1 Subcontracting

The Beneficiary shall not subcontract the performance of any its obligations under the EISI Agreement without prior written consent of the Agency, as specified in the EISI Agreement or in an Amendment signed by the Parties. The EISI Agreement shall identify the subcontractor authorised by the Agency.

Subcontracting by the Beneficiary of any parts of the Project shall not relieve the Beneficiary of any of its obligations under the EISI Agreement. The Beneficiary shall be liable towards the Agency for any breach by a subcontractor of any provision of the EISI Agreement to the same extent as if the Beneficiary had committed such breach directly.

8.2 Assignment

The Beneficiary shall further not assign nor transfer any of its rights or obligations under the EISI Agreement, without the prior written consent of the Agency, as specified in the EISI Agreement or in an Amendment signed by the Parties. The Beneficiary shall secure in any such assignment or transfer that the obligations of the Beneficiary and the rights of the Agency as set forth in the EISI Agreement, remain applicable to the successor.

Any such transfer or assignment shall not relieve the Beneficiary from any liabilities which may have accrued prior to the date of assignment or transfer.

Furthermore the Beneficiary shall not use the EISI as capital to float a company or for any other use than for the Project.

CLAUSE 9 : AMENDMENTS

- 9.1 No modification, amendment, supplements to or waiver of any provision of the EISI Agreement will be binding unless a written Amendment is signed by both Parties.
- 9.2 Amendments to the EISI Agreement may be introduced provided that such amendment does not have the purpose or effect of significantly enlarging the technical and financial scope of the of the EISI. The Parties shall promptly consider and use their best endeavours to timely reach an agreement on the change request.
- 9.3 Each Party shall be responsible for its own costs incurred in the preparation or consideration of the Amendment.

CLAUSE 10 : TIME LIMITS – REPORTING - HARDWARE

10.1 Time limits

The implementation period of the Project shall be laid down in the EISI Agreement and shall in any case commence no later than three (3) months from the signature of the EISI Agreement.

The Beneficiary shall comply with the planning as it may be detailed in the EISI Agreement. If the Beneficiary fails to meet any milestone, then, without prejudice to any other remedies available to the Agency and without diminishing the Beneficiary's liability for such breach, the Agency may decide to take any of the appropriate measures foreseen in **Clause 7**.

The Beneficiary shall inform the Agency in writing as soon as possible but not later than one (1) month from the occurrence of any circumstance likely to delay or compromise the implementation of the Project.

The Beneficiary may request an extension of the Project's implementation period before the end of the implementation period foreseen in the EISI Agreement. If agreed, such extension shall be formalized in accordance with **Clause 9**.

10.2 Reporting – other documentation

Unless otherwise agreed in the EISI Agreement, the Beneficiary shall provide the Agency with the following:

- a. a monthly progress report with a summary of the current status of the Project (including specific progress made since the preceding status report, of any problems and recommended remedial action);
- b. a Mid Term Report detailing the technical and commercial work carried out by the Beneficiary as part of the Project during the first half of the Term of the EISI Agreement
- c. a Final Report containing a complete description of all the work performed during the Project. It shall contain a comprehensive introduction of the context, a description of the programme of work and report on the activities performed and the results achieved.

In addition to the above, the EISI Agreement may request from the Beneficiary additional reporting and/or documentation including visual presentations, photographs and videos.

10.3 Hardware, including embedded software

In the event the Beneficiary develops hardware as part of its Project under the EISI Agreement, the Parties may agree that the Beneficiary lends the hardware including a

licence to any related software to the Agency for the Agency's communication purposes.

CLAUSE 11 : FUNDING - PAYMENTS

11.1 EISI amount – Co-funding – Confirmation by the Beneficiary

The EISI amount shall be mentioned in the EISI Agreement and corresponds to the Agency's agreed share of Eligible Cost as defined in **Annex 1** hereto within the co-financing threshold identified in the relevant call.

The EISI beneficiary shall co-fund (e.g. Beneficiary's own resources, financial contributions from third parties etc.) the Project, unless full funding by the Agency is explicitly provided for in the relevant programmatic framework.

By signing the EISI Agreement, the Beneficiary confirms that the public financial support provided either by the Agency or by another entity during the whole duration of the EISI Agreement is not exceeding, in aggregate, EUR 200,000 per single undertaking over any period of three (3) fiscal years, considered on rolling basis, whereas single undertaking shall be understood as economic operator and shall be interpreted in the light of the applicable legal framework.

11.2 EISI Payments

11.2.1 The Agency shall make payments according to the payment plan set forth in the EISI Agreement. Such payments shall be related to demonstration of satisfactory/commensurate progress in the implementation of the Project.

Payments made by the Agency do not constitute endorsement or approval of the Project or its Results, or of their quality or suitability for a particular use, and the Beneficiary shall refrain from using any statements which could suggest otherwise.

11.2.2 Payments shall be made within thirty (30) calendar days of receipt by the Agency of the required documents and fulfilment of the requirements specified in the EISI Agreement payment plan. Only upon fulfilment of these requirements shall the Agency regard the invoice as due.

11.2.3 If advanced payments are agreed as part of the EISI Agreement, Advance Payment Requests (APR) shall be submitted by the Beneficiary after signature of the EISI Agreement by both Parties and, if applicable, as further specified therein. The Advance Payment(s) constitute(s) (a) debt(s) of the Beneficiary to the Agency until it(they) has(have) been set-off against the progress payment(s) and/or final settlement.

11.2.4 Milestone Achievement Confirmation (MAC) (hereinafter referred to as "confirmation") together with the corresponding invoice shall be submitted by

the Beneficiary and attached in the Agency's financial system for the Agency's approval.

- 11.2.5 The Beneficiary shall submit in the Agency's financial system a confirmation for the Agency's approval, that all Project activities as defined in the EISI Agreement have been completed. Such confirmation shall be submitted not later than ninety (90) days from the completion date.

Without prejudice to any surviving obligations resulting from the EISI Agreement, payment by the Agency of the final settlement shall constitute the formal close out of the EISI Agreement.

- 11.2.6 When releasing progress and/or final payments, 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 set out in the EISI Agreement.

- 11.2.7 All invoices shall be submitted to the Agency in electronic form through the Agency's financial system.

The Beneficiary shall ensure that the APR, all invoices and all confirmations are submitted for payment exclusively through the Agency's financial system. If the Beneficiary has no access to the Agency's financial system at the time of signature of this Agreement, an immediate request for an esa-p user account to the financial system shall be made by the Beneficiary to the ESA Helpdesk (mail to: esait.Service.Desk@esa.int), specifying a contact name, the company name, and the ESA Agreement Number.

The Beneficiary undertakes to complete invoices and confirmations, and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in the financial system.

- 11.2.8 Payments shall be made by the Agency in EURO to the account specified by the Beneficiary. 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 this **Clause 11.2.8**.

Any special charges related to the execution of payments shall be borne by the Beneficiary.

- 11.2.9 The Beneficiary shall also be responsible for paying its Subcontractor(s) if any in accordance with the applicable law and normal commercial practices. The Beneficiary shall indemnify the Agency against any claims arising from such Subcontractor(s), caused by the Beneficiary's failure to pay the Subcontractor(s). The Beneficiary shall supply to the Agency, upon request, evidence of payments made to its Subcontractor(s).

CLAUSE 12 : TERMINATION

12.1 Termination for non-achievement of Project objectives

If either Party believes that the objectives of the Project under the EISI Agreement can no longer be achieved (including due to events of Force Majeure) it shall conduct consultations with the other Party with a view to find a mutually acceptable solution or terminate the EISI Agreement. Termination conditions shall be dealt with in accordance to **Clause 12.5**.

12.2 Termination for breach

12.2.1 In addition the EISI Agreement may be terminated by the Agency by written notice to the Beneficiary if the Beneficiary commits a material breach of any provision of the EISI Agreement :

- a. which is incapable of remedy or ;
- b. which is capable of remedy but which the Beneficiary failed to remedy within thirty (30) days, or any other time limit specified in the written notice specifying the breach and requiring it to be remedied.

12.2.2 Without prejudice to the generality of the **Clause 12.2.1**, the Agency may terminate EISI Agreement in particular in case :

- a. the Beneficiary makes changes to the Project without prior written approval of the Agency;
- b. the Beneficiary uses the EISI for other purposes than the performance of the Project;
- c. the Beneficiary provided the Agency with erroneous or misleading information or documentation, whether intentionally or not, anytime during the EISI Procedure.

12.3 Other cases of termination

The EISI Agreement may be terminated by the Agency also in case the Beneficiary:

- a. ceases activity, becomes insolvent or if his financial position is such that within the framework of his national law, legal action leading towards bankruptcy may be taken against him by his creditors;
- b. resorts to fraudulent practices;
- c. there is a change in the status or the location of the registered office or the operating location of the Beneficiary such that the registered office or operating location or principal place of business of the Beneficiary is outside the territory of the Member State where it was located when the EISI Agreement was signed;
- d. assigns or otherwise transfers the EISI without prior written approval of the Agency; or
- e. fails to comply with any of the eligibility conditions.

12.4 Termination procedure

In cases of breaches referred to in **Clause 12.2** above, the termination shall take effect following a prior written notice of thirty (30) days. In all cases foreseen in **Clause 12.3**, termination shall take effect on the day following the date on which the termination notice was received by the Beneficiary.

12.5 Consequences of termination

12.5.1 In the event of expiry or termination of the EISI Agreement howsoever arising, the Beneficiary shall return to the Agency at its own expense all Proprietary Information of the Agency (including all copies in whatever form of any such information) or, at the request of the Agency, destroy or permanently erase all copies of that Proprietary Information in the Beneficiary's possession or control, and undertake not to use any such Proprietary Information for any purpose. If required by the Agency, the Beneficiary shall certify in writing having fully complied with these requirements.

12.5.2 In the event of such termination and without prejudice to ESA rights under **Clause 7**, the Beneficiary shall keep the amounts already paid by the Agency with the exception of any advance payment not yet offset which shall be reimbursed by the Beneficiary within thirty (30) days from termination.

12.5.3 Documents provided to the Agency prior to the termination shall be kept by the Agency with the continuous right to use them as laid out in **Clause 18**.

12.5.4 In the event of termination of the EISI Agreement by the Agency for any of the above mentioned reasons all the rights and licenses (if any) granted to the Beneficiary shall cease.

12.5.5 The expiry or termination of the EISI Agreement for any reason:

- a. shall be without prejudice to any rights of either Party which may accrue by, at, or up to the date of such termination with the exception stated above;
- b. shall not affect any provision of the EISI Agreement which is expressly or intended to continue in effect after such termination, which includes :
 - i. **Clause 8** "Audit"
 - ii. **Clause 12.5** "Consequences of termination"
 - iii. **Part III** "Intellectual Property Rights – Proprietary Information "
 - iv. **Part IV** "Applicable law and Dispute resolution"
 - v. **Annex 1** "EISI Cost audit and Eligible Cost"
 - vi. **Annex 2** "Personal Data Protection "

CLAUSE 13 : LIABILITY

13.1 Indemnity

The Beneficiary shall indemnify the Agency from and against any and all damages and losses arising out or resulting from:

- a. the inaccuracy or untruthfulness of any representation or warranty made by the Beneficiary under the EISI Agreement;
- b. the Beneficiary's failure to obtain any required Consents as per **Clause 14**;
- c. non-compliance by the Beneficiary with any agreement entered by the Beneficiary with a third party;
- d. any damage for the Agency arising out of Beneficiary's failure to comply with any Applicable Law and Regulatory Requirements, as per **Clause 14**;
- e. the Beneficiary's failure to comply with its obligations in relation with the verifications and audits agreed under the EISI Agreement; and/or
- f. any claim or allegation of a third party relating to any aspect covered by the EISI Agreement.

13.2 Liability

13.2.1 The liability incurred by a Party under the EISI Agreement is limited to damages which are directly caused by the breach of its obligations by such Party ("Direct Damages").

The Parties shall not be liable towards each other for indirect consequential damages sustained by the Parties, arising from and during the execution of the EISI Agreement.

The liability of the responsible Party towards other Party shall however in no case, exceed an amount equal to the amount of the EISI agreement except in cases mentioned in **Clause 13.2.2**.

13.2.2 Nothing in these Clauses or in the EISI Agreement shall be deemed or construed so as to limit, restrict or exclude the liability of a Party :

- a. when the damage has been caused by criminal offence, fraud, gross negligence or wilful misconduct;
- b. for breach of confidentiality provisions or for breach of Third Party Intellectual Property Rights;
- c. arising from claims for which the Beneficiary has agreed to give an indemnity;
- d. arising from any breach by the Beneficiary of its obligations under **Annex 2** "Personal Data Protection".

13.2.3 Should the Agency provide any contribution in-kind (e.g. technical support, software or possibly hardware to be further specified in the EISI Agreement) this shall not entail any liability of the Agency towards the Beneficiary.

- 13.2.4 The liability of either Party for injury to personnel and/or damage to goods owned by the other Party shall be settled in accordance with the Law governing the EISI Agreement.

CLAUSE 14 : COMPLIANCE WITH STATUTORY AND OTHER OBLIGATIONS

- 14.1 The Beneficiary shall perform the EISI Agreement in compliance with all the rules, regulations, laws applicable to the Beneficiary (herein “the Applicable Law and Regulatory Requirements”).
- 14.2 The Beneficiary is solely responsible for acquiring the necessary licenses, authorisations, waivers, or permits (“Consents”) from the regulatory bodies or other Third Parties.
- 14.3 The Agency shall not be held responsible if the Beneficiary does not comply with the obligations resulting from **Clauses 14.1 and 14.2**.

PART III INTELLECTUAL PROPERTY RIGHTS – PROPRIETARY INFORMATION

CLAUSE 15 : INTELLECTUAL PROPERTY RIGHTS

15.1. Ownership of the Results

The Beneficiary shall own all Intellectual Property Rights arising from the Project performed under the EISI Agreement.

15.2. Registration of Intellectual Property Rights

The Beneficiary shall examine the possibility and interest for the Beneficiary to register any Intellectual Property Rights in and to the Results stemming from the EISI Agreement.

In case the Beneficiary is not interested in registering Intellectual Property Rights for the above mentioned Results, the Beneficiary shall consult with the Agency and consider, in good faith, any request or recommendation which may be formulated by the Agency.

CLAUSE 16 : INFRINGEMENT OF THIRD PARTY RIGHTS

The Beneficiary shall ensure that none of the Results, created or delivered, of the tools used by the Beneficiary (or by its subcontractors) or of the reports, documentation and/or any Communication Material provided to the Agency under the EISI Agreement infringes or will infringe any Third Party's rights.

If a third party claims an infringement of its Intellectual Property Rights, or otherwise opposes to the exercise of any rights granted to the Agency under the Agreement, the Agency shall notify such claim to the Beneficiary, and the Beneficiary shall promptly defend, and hold the Agency harmless against all losses, expenses, claims and any other actions.

Notwithstanding any other surviving rights and obligations of the EISI Agreement under the applicable law and for the sake of clarity, this Clause survives the termination or expiration of the EISI Agreement.

CLAUSE 17 : PROPRIETARY INFORMATION - DISCLOSURE

17.1 Proprietary Information

As used herein, "Proprietary information" shall be defined as any information which either party may consider as sensitive and agree to disclose to the other party under non-disclosure conditions and marked as "Proprietary Information". Marking of such

information as proprietary shall be the prerogative of the disclosing party subject to the disclosure conditions defined here-below.

The Parties' Proprietary Information may also include information that is considered as Personal Data (as defined in **Annex 2** hereto).

17.2 Disclosure

Neither Party shall disclose any Proprietary Information, to any Third Party whatsoever without the prior written consent of the other Party in which case the other Party may require the recipient to sign a non-disclosure agreement. Unless otherwise specifically agreed in the EISI Agreement, the reports or other documentation to be provided to the Agency under the EISI Agreement shall be marked as "Proprietary Information", with the exception of the Progress and Final reports and Communication Material which shall be deemed non-Proprietary information.

This non-disclosure obligation does not apply if:

- a. The disclosing party agrees in writing to release the other party from this obligation ;
- b. The information or documentation become public through other means than a breach of the non-disclosure obligations ;
- c. The disclosure of the information or documents is required by law.

The Agency is entitled to share the documentation and information incorporated in the EISI Agreement as well as any reports resulting from the Project with its employees and its professional agents, including on-site support contractors, for the following purposes

- EISI management control ;
- inspections and audits ;
- arbitration of any dispute arising in connection with the interpretation or the implementation of the EISI Agreement.

The obligations set forth in this Clause shall remain in force during the term of this Agreement and for a period of five (5) years after its expiration or termination or any other longer period as required by law or set forth in a EISI Agreement.

The Agency may publish for any of the Agency's communication and/or reporting purposes the following information about the Beneficiary: name, address if a legal person or the city of domicile if a natural person, amount of the EISI and general information about the Project.

CLAUSE 18 : USE BY THE AGENCY OF NON-PROPRIETARY INFORMATION

The Agency shall be entitled to use (including to reproduce, copy, publish, disclose to the public on any current or future communication media or network) any non-Proprietary Information provided by the Beneficiary for the Agency's own purposes (but excluding any use for commercial purposes).

These rights are granted to the Agency without further formality on worldwide, non-exclusive and free-of-charge basis, during the period of protection by an intellectual property right, with the possibility for ESA to authorise the use by Third Party under the same terms for ESA's own purposes.

CLAUSE 19 : USE OF THE AGENCY'S NAME, ACRONYM OR LOGOTYPE

19.1 Use of the Agency's name, acronym or logotype

The Beneficiary is, for the duration of the EISI Agreement, granted a royalty free, non-exclusive, non-transferrable and revocable license to use the Agency's name, acronym or logotype only under the following limited terms and conditions :

- a. Purpose of use: for any communication or publication made by the Beneficiary that relates to the Project, including press releases, at conferences, seminars or in any information or promotional materials in whatever form and through whatever medium (herein "Communication Material") provided that the Agency has given its prior written approval on the samples of Communication Materials as provided for under paragraph 2 here-below.
- b. Authorised use: Pursuant to this license and for Communication Material only, the Beneficiary is allowed to copy and display ESA name, acronym or logotype on its Communication Material as described above, with the right to grant sub-licences only to those Third Parties acting on behalf of the Beneficiary (e.g. subsidiaries, agents, etc.) and are involved in the creation of the Communication Materials. The Beneficiary shall remain liable for such Third Parties towards the Agency. Any use of the Agency's name, acronym or logotype not expressly authorised by the Agency is forbidden

The Agency may terminate this right to use at any moment, by written notice to the Beneficiary.

19.2 Publicity

In consideration of the respective roles of the Parties, the Beneficiary shall refrain from any misleading communication in relation to their respective roles and shall take

into account any suggestion made by the Agency, should any information or communication media appear as misleading or not consistent with the EISI Agreement.

The Beneficiary shall submit samples of the Communication Materials in advance to the Agency, which may, at its discretion, withhold its approval or grant it under conditions that the Agency considers appropriate. The final Communication Materials shall be produced in strict conformity with the samples approved by the Agency.

Unless the Agency requests or agrees otherwise in the EISI Agreement, any Communication Material:

- a. shall indicate that the Project has received EISI support from ESA ;
- b. may not display any other ESA logotype than the one available on http://webservices.esa.int/ESA_Logo/index.php;
- c. shall state that it reflects only the Beneficiary's view and not the one of the Agency ;
- d. shall state that the Agency is not responsible for any use that may be made of the information it contains.

PART IV APPLICABLE LAW AND DISPUTE RESOLUTION

CLAUSE 20 : APPLICABLE LAW

The EISI Agreement shall be governed by the EISI GC , complemented when necessary by the substantive national Law identified in the EISI Agreement and without prejudice to :

- (i) the applicability of ESA Convention and in particular its **Annex I** on privileges and immunities of the Agency and of the EISI Resolution
- (ii) Article 14 herein.

CLAUSE 21 : DISPUTE RESOLUTION

The Parties shall use their best endeavours to settle amicably any dispute arising out of or in relation to the EISI Agreement.

Failing an attempt towards an amicable settlement within 30 days from the date of a written notice from one Party to the other Party to notify the existing dispute, 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 cost of arbitration, including the fees and expenses of the arbitrators, shall be shared equally by the Parties unless the arbitration award otherwise provides. Each Party shall bear its own representation fees and costs associated with the arbitration. The arbitration proceedings shall be conducted in the English language at a location defined in the EISI Agreement.

The arbitration award shall be final, binding on the Parties and their successors and assigns which shall comply in good faith with such decision and no appeal shall lie against it.

The enforcement of the arbitration award shall be governed by the rules of procedure in force in the state/country in which the arbitration award is to be executed.

ANNEX 1: EISI COST AUDIT AND ELIGIBLE COSTS

1 EISI CONTRACTS COST AUDITS

In line with the General Clauses for ESA EISI Agreements, the Beneficiary and all its sub-contractors shall enable and facilitate the audit of the costs incurred for the execution of the Project at any time during and after its implementation.

In order to ensure compliance to such obligation the Beneficiary and its sub-contractors shall establish and implement adequate cost accounting practices and principles. In particular :

- The actual manpower effort spent on the Project must be recorded on a regular basis using timesheets or an equivalent time accounting system. The system must be already deployed at the time of the project kick-off, for all personnel or at least for those engaged on funded and co-funded projects, as well as research & development activities. Timesheets shall be filled in by personnel in the payroll and by any external manpower resource, in accordance to national legislation.
- An adequate accounting system shall keep records pertaining to the costs and expenses allocated to projects, to the extent and in such details as to properly reflect all direct and indirect costs of labour, materials, equipment, supplies and services and other costs and expenses of whatever nature, as well as all rebates and other credits.

The Agency's right of audit includes the verification and negotiation of the cost rates and overheads in accordance to normal ESA practice and conditions.

Wherever the Beneficiary has already a valid rates agreement with the Agency, the agreed applicable rates shall be used for the project costing.

1.1 Background documentation supporting the audit

Examples of documentation to be provided for the audit are:

- a) EISI Project brief description, including purpose, deliverables and schedule.
- b) Cost Breakdown Summary, for which a single PSS-A2 per company must be compiled.
- c) Extract from the cost accounting system of the Project cost report.
- d) Detailed overview of the labour hours allocated to the Project.
- e) Detailed overview of the external costs allocated to the Project.

In case rates and overheads need to be verified and calculated, the following documentation shall be added:

- The last two (2) published/signed annual financial statements including related notes.
- Personnel demographics (i.e. full-time-equivalent, worked hours, productive hours, salaries and employer's costs), for anonymised individuals or consolidated sub-totals in labour categories/cost centers.
- Detailed Trial Balance for the reference year.
- Cost/overhead allocation mechanism between labour, material and internal special facilities if applicable.

The auditor may request additional documentation as relevant on a case-by-case basis.

1.2 Audit Plan and Procedure

The following steps refer to the Beneficiary, but it shall be understood that they apply also to its sub-contractors.

- The auditor shall announce the audit by contacting the legal representative of the Beneficiary in writing.
- The Beneficiary shall respond within ten (10) working days, acknowledging the announcement and indicating the persons (and their contact detail) who will support the audit.
- The Background documentation (paragraph 1.1) shall be delivered to the auditor at an agreed date and no later than two (2) months after receipt of the announcement unless otherwise indicated in the announcement letter.
- The auditor shall review the documentation remotely and, if deemed necessary, may later visit the Beneficiary for a field work meeting to verify all or a sample of the claimed cost.
- At the completion of all proceedings, the audit shall result in an internal report for the Agency, which will be distributed to the Beneficiary for information.
- The audit shall be considered closed when the ESA internal report is fully signed and the Beneficiary acknowledges its receipt no later than four (4) weeks the report has been communicated.

2 ELIGIBLE COSTS FOR EISI AGREEMENTS

2.1 Direct and Indirect costs

Direct cost consists of all the expenses that can be specifically identified and measured as having been incurred for specific activities (projects). Viceversa, Indirect cost consists of all the expenses that are incurred for common purposes necessary for the business and cannot be attributed to a specific activity.

While specific materials, external services and other miscellaneous costs are allocated directly to the projects they are required for, the manpower cost is allocated according

to the amount of time spent by the personnel on the execution of such projects. The allocated time is converted into cost by applying hourly cost rates.

A particular case is the one of Internal Special Facilities, consisting of cost centers (or assets) that attract relatively large costs, so that instead of treating such cost as Indirect, it is better to identify adequate cost rates for a direct allocation to projects.

Indirect cost is allocated to funded (and co-funded) projects by means of mark-up rates and overheads applicable to the labour hourly rates and possibly to direct expenses through material handling and procurement overheads.

The costing methodology used for the calculation of the rates and overheads must be consistent with the way that hours and cost are charged to projects.

2.2 Eligible and not-eligible costs

2.2.1 General eligibility criteria

A cost is generally eligible in EISI Projects as far as the following conditions are fulfilled:

- i. it is necessary for the overall operation of the core business or the execution of the contract;
- ii. it is reasonable and suitable in its nature and amount, and does not exceed that which would be incurred by an ordinary prudent person in the conduct of normal business;
- iii. it is verifiable, in particular being recorded in the accounting records and determined according to applicable accounting standards;
- iv. it complies with the internal procedures and policies of the company.

In addition, where any credit, rebate, allowance and other income covers eligible costs charged either directly or indirectly to the projects, the relevant portion of such income shall be credited accordingly.

2.2.2 Non-eligible cost

Beside the general eligibility criteria, the following list describe costs that in any case are not-eligible for recovery in EISI Projects, neither as direct cost nor indirectly through rates and overheads.

- Advertising, except for technical and professional journals for knowledge transfer or the dissemination of information to industry;
- Gifts, contributions and donations;
- Amusement, diversion and social activities;
- Cost of remuneration, having the nature of distribution of profits; for example profit sharing bonuses, Participation;
- Cost related to facilities idle (very low utilization) or in excess (no future utilization);
- Expenses related to violations of laws and regulations;

- Contract losses and penalties (including cost overruns of any type);
- General contingencies, reserves, provisions;
- Losses on bad debts and related expenses;
- Cost related to takeover, mergers, securities and capital stock issues;
- Any expense linked to pursue claims against the Agency;
- Losses on assets sale or scrap;
- Corporate income taxes;
- Commissions and gratuities paid to Third Parties;
- Interests on capital;
- Interests on liabilities;
- Self-funded cost on partially funded projects ;
- Depreciation of assets funded by the Agency or other Public entities;
- Unreasonable rental/lease costs;
- Cost or amortisation of (un)realised appreciation of assets or liabilities ;
- Entertainment and recreation or amusement expenses;
- Unreasonable personnel compensations (including any form of remuneration and fringe benefits), measured against industry and sector norms within the Country of registration;
- Unreasonable corporate charges (i.e. shared services and management fees);
- Self-funded Research expenses in excess of 5% (7.5% for SMEs and Research organisations) of the Total Cost Base (i.e. Total Cost excluding non-eligible costs and sub-contractors);
- Product Development expenses;
- Depreciation of capitalised R&D costs;
- Cost related to accidents or rework;
- Insurance fees for 'loss of profit', penalties or incentives;
- Losses on currency exchange;
- Cost of offices outside ESA Member, Associate or Cooperating States and not related to Space activities.

In addition, deviations from established practices, which cause significant increases to the cost base, shall either be considered non-eligible or categorised as Restructuring cost.

Any cost related to restructuring (including but not limited to personnel rationalization, reorganisations, mergers, takeovers, divestments, and other significant changes) can be considered eligible only if it can be demonstrated to lead to future savings (cost or productivity). If such type of cost is considered eligible, it may have to be amortised over 3 to 5 years, in order to avoid sudden variations in the rates and overheads.

2.2.3 In-kind contributions

If expressly agreed in the EISI Agreement, the Beneficiary is allowed to contribute to the Project cost with in-kind contributions, being elements of economic value for the Beneficiary but not already charged to the Project either directly or indirectly (overheads). This includes for example information, assets, goods or other resources

available to the Beneficiary, or intellectual property for which normally the Beneficiary charges a fee.

The correct representation and quantification in-kind contributions is to report a relevant direct cost for the project and include the same total amount as part of the Company contribution.

The in-kind contributions shall:

- comply to the eligibility conditions set out in 2.2.1 and 2.2.2. of this Annex and
- not exceed 25% of the total Project cost, unless otherwise agreed in the EISI Agreement.

In particular, in case of assets depreciation,

- a) for existing assets, the depreciation shall not be included in the cost base for rates and overheads recovery and the eligible amount does not exceed the residual value of the asset at the project kick-off;
- b) for newly purchased assets, the eligible amount, calculated on the necessary utilization for the EISI Project, does not exceed 50% of the total depreciation of the asset.

Contributions such as but not limited to information, equipment and services obtained by the Beneficiary free-of-charge do not qualify as eligible costs and therefore cannot be claimed as in-kind contributions.

ANNEX 2: PERSONAL DATA PROTECTION

Personal Data “Controller to Controller” Annex (the “PDCC”) of the European Space Agency (“ESA” or the “Agency”)

This “Controller to Controller” Annex governs the processing of Personal Data exchanged by the Parties, acting as separate Controllers, in the frame of the Contract. Such Annex 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. This Annex survives the expiration or termination of the Contract for as long as the Personal Data are protected by the Data Privacy Regulations.

1. DEFINITIONS

The following specific definitions apply:

- (i) “Agreed Territory” (of Processing) means:
- a) ESA Member States, as they are listed in the ESA website at URL: http://www.esa.int/About_Us/Welcometo_ESA/New_Member_States;
 - b) European Union;
 - c) countries recognized by the European Commission as ensuring an Adequate Level of Protection of Personal Data under the European Union’s legal framework.

- (ii) “Data Privacy Regulations” means respectively:
- a) ESA PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at URL: http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations
 - b) the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing which provide an Adequate Level of Protection under the ESA PDP Framework (e.g. EU Regulations in the field of personal data protection, including but not limited to Regulation (EU) nr. 2016/679).

- (iii) “Personnel” means:
- a) with respect to the Contractor: any employee, agent or representative acting under the responsibility of the Contractor or, if subcontracting is permitted, of Contractor’s subcontractors;
 - b) with respect to ESA: any employee, agent or representative acting under the responsibility of ESA (e.g. staff members and seconded agents, consultants experts or employees of third parties).
- With respect to terms used with capitals in this Annex (e.g. “Controller”, “Personal Data” etc.) but not defined above, reference is made to the definitions set forth in the Data Privacy Regulations applicable according to Article 2 below.

2. GENERAL

2.1 Each Party is individually and separately responsible for complying with the level of protection resulting from its Data Privacy Regulations in relation to Personal Data, being recognised that:

- a) the Contractor is governed by the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing, which

provide an Adequate Level of Protection under the ESA PDP Framework (e.g. EU Regulations in the field of personal data protection, including but not limited to Regulation (EU) nr. 2016/679.

- b) ESA is governed by PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at the URL:

http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations

2.2. The Parties are considered separate Data Controllers of the Personal Data, with each Party being able to determine the purpose and means of Processing the Personal Data under its control in accordance with its privacy statement.

2.3 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 this Annex;
- 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;
- d) the compliance, in case the performance of the Contract requires access to the Parties’ premises, with the health, safety and security requirements, legal or regulatory obligations applicable to the respective Party in such matters.

3. PERSONAL DATA EXCHANGED BY THE PARTIES

In the performance of this Contract each Party may disclose to the other Party data which may qualify as “Personal Data” under its Data Privacy Regulations as follows:

- a) the Agency shall communicate to the Contractor only the Personal Data concerning ESA representatives/contact persons including name, work address, email and telephone numbers;
- b) the Contractor shall 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 person’s job and responsibilities and the precise assignment of the person to the activity under the Contract.

4. PARTY’S OBLIGATIONS

4.1. Each Party is individually and separately responsible for complying with the level of protection resulting from its Data Privacy Regulations in relation to Personal Data,

including the collection and update of the Personal Data that it communicates to the other Party, the lawfulness and the quality of such Personal Data and for the means by which they were collected. Should the legal basis for the collection of the Personal Data cease to exist or the quality of the Personal Data be affected, the Party will inform the other Party without undue delay.

4.2. The Parties shall preserve the rights and legal remedies of the Data Subject as recognised and protected in the Data Privacy Regulations applicable respectively to each Party. In particular, the Data Controller which disclosed the Personal Data to the other Party will respond to enquiries from Data Subjects and, as the case may be, from any competent authority concerning the data processing of the relevant Personal Data.

4.3. In case the Parties engage Processors to support their internal operations, including the Processing of the Personal Data exchanged, it is the responsibility of that Party to ensure that its Processors assume obligations consistent with the Data Privacy Regulations applicable to the respective Party, in order to guarantee an adequate level of protection of Personal Data.

4.4. The Party having received the other Party's Personal Data under the Contract shall Process such Personal Data only in the Agreed Territory of Processing.

5. DATA RETENTION

5.1. The Parties shall not retain or process the Personal Data exchanged longer than is necessary to carry out the purpose described in Article 2.3 herein, unless required otherwise:

- a) under the Data Privacy Regulations, (e.g. in the frame of audits, inspections and incidents) or
- b) under the Party's statutory obligations.

5.2. The retention period shall be defined in the privacy notices of the Parties.

5.3. All Personal Data must be, effectively destroyed/deleted upon expiration of the retention period, unless conservation of such data is required for compliance with any legal or regulatory obligation to which the Party having received the Personal Data from the other Party is subject.

6. CONFIDENTIALITY

The Parties shall ensure the confidentiality of the Personal Data processed by protecting them against unauthorized or unlawful access, acquisition, use and disclosure, in particular by:

- a) limiting access to the Personal Data of the other Party only to their Personnel, that:

- are required or authorized to access such Personal Data;
- have committed themselves to confidentiality or are under a statutory obligation of confidentiality;
- have received the appropriate Personal Data protection training.
- b) taking into consideration, in terms of IT tools, product, applications, the principles of personal data protection by design and by default.

7. 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:

- a) the on-going confidentiality, integrity, availability and resilience of Processing systems and services;
- b) measures to protect Personal Data from accidental, unlawful or unauthorized access, use, destruction, loss, modification or transfer.

8. DATA PROTECTION OFFICER/CONTACT POINT

For any Personal Data protection matters, the Parties shall involve their specific contact points identified in the Contract.

9. TRANSFER

The Party having received the other Party's Personal Data under the Contract shall Process (and have processed by its authorised subcontractors or sub-processors) such Personal Data only in the Agreed Territory of Processing. No transfer of Personal Data outside the Agreed Territory is allowed without prior written approval of the other Party.

10. SUB-CONTRACTORS

10.1 The Contractor is authorised to disclose Personal Data received from the Agency to its Sub-contractors provided that:

- a) sub-contracting is specifically authorised by Contract and the Sub-contractors are indicated in the Contract;
- b) all the general conditions set forth in this Annex are fulfilled ; in particular the Processing of the Personal Data by the Sub-contractors is performed for the purpose described in Article 2.3 herein and the Personal Data are not transferred outside the Agreed Territory.

10.2 Disclosure of the Agency's Personal Data to other third Parties requires prior approval of the Agency.

11. PERSONAL DATA BREACHES

11.1 After becoming aware of a Personal Data Protection Breach falling in its area of responsibility, and affecting the Personal Data communicated by the other Party, the Party shall notify the other Party within 48 hours.

11.2 The Parties will provide each other reasonable assistance to facilitate the handling of the Personal Data Breach and accurate information about the breach, in particular (but not only) in case a complaint is, or likely to be, lodged by a Data Subject in relation to the Breach.

12. LAW – DISPUTE RESOLUTION

Concerning Personal Data protection matters, notwithstanding any other provisions on the governing law set forth elsewhere in the Contract, the provisions set forth in the Data Privacy Regulations, as defined herein, will apply as mentioned in Article 2 herein and will prevail in case of conflict. Without prejudice to the foregoing, disputes between the Parties on Personal Data protection matters shall be settled in accordance with Article 1.3.3 of the Contract.