



ESA Contract No. 4000xxxxx/25/D/SR

with

[Contractor]

**Ensemble and Surrogate Modelling for Debris Environment
long-term Simulation – T711-801SD**



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 Operations Centre (ESOC),

located at: Robert-Bosch-Strasse 5,
64293 Darmstadt,
Germany,

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”:



Table of Contents

ARTICLE 1. SUBJECT OF THE CONTRACT; GENERAL TERMS OF EXECUTION	6
ARTICLE 2. DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY	8
ARTICLE 3. PRICE.....	11
ARTICLE 4. PAYMENTS AND INVOICING	12
ARTICLE 5. SPECIFIC PROVISIONS	17
ARTICLE 6. INTELLECTUAL PROPERTY RIGHTS	24
ARTICLE 7. MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE CONTRACT.....	28
APPENDIX 1.....	31
APPENDIX 2.....	32
APPENDIX 3.....	34
APPENDIX 4.....	36
APPENDIX 5.....	38
ARTICLE 1 - DEFINITIONS	40
ARTICLE 2 - PREAMBLE	44
ARTICLE 3 - GRANT OF LICENCE, LICENCE RESTRICTIONS.....	44
ARTICLE 4 - WORK RESULTS.....	45
ARTICLE 5 - LIMITATION OF LIABILITY; SUPPORT AND MAINTENANCE.....	46
ARTICLE 6 - THIRD PARTY OWNED SOFTWARE NOT DISTRIBUTED TOGETHER WITH THE LICENSED PRODUCT	46
ARTICLE 7 - THIRD PARTY OWNED SOFTWARE DISTRIBUTED TOGETHER WITH THE LICENSED PRODUCT	47
ARTICLE 8 - BETA VERSION	48
ARTICLE 9 - EXPORT RESTRICTIONS	48
ARTICLE 10 - DISCLOSURE	48
ARTICLE 11 - INTELLECTUAL PROPERTY RIGHTS.....	49
ARTICLE 12 - CONSIDERATION FOR LICENCE AND SERVICES	49
ARTICLE 13 - INFRINGEMENT	49
ARTICLE 14 - TERM AND TERMINATION.....	50
ARTICLE 15 - GOVERNING PROVISIONS	50
ARTICLE 16 - NOTICES	51

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.
“Work Results”	mean all output of the Contractor’s and/or any Sub-Contractor’s work rendered under this Contract. “Work Results” shall also include the respective Work Result item (such as, e.g. the respective software, hardware or document).

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

The Contractor, as further described in the Statement of Work in

- 1.1 **APPENDIX 1** hereto, undertakes to perform the activity “Ensemble and Surrogate Modelling for Debris Environment long-term Simulation” – T711-801SD (all hereafter referred to as the “Work”) and to deliver all the items listed in ARTICLE 2 of this Contract.
- 1.2 The Work shall be performed in accordance with the provisions stated in the following documents, listed in order of precedence in case of conflict:
 - a) The specific Articles of this Contract with its **APPENDIX 2** (Contract Change Notice), its **APPENDIX 3** (Inventory/Fixed Asset Record), its **APPENDIX 4** (Confidentiality Undertaking) and its **APPENDIX 5** (Licence Agreement);
 - b)
 - c)
 - d)
 - e) **APPENDIX 1** hereto: the Agency’s Statement of Work, reference TDE-SDM-SOW-437-OPS-SD, issue 1.0, dated 02.10.2025;
 - f) The signed Minutes of the Negotiation Meeting held on ..., reference ..., issue ..., revision ..., dated ..., not attached hereto but known to both Parties;
 - g) The Contractor’s Proposal, reference ..., issue ..., revision ..., dated ..., not attached hereto but known to both Parties.
- 1.3 General Terms of Execution
 - 1.3.1 The Contractor’s own sales conditions shall not apply.
 - 1.3.2 The language of this Contract and of all communications hereunder shall be English. The substantive law according to which this Contract shall be construed is [.....].
 - 1.3.3 The Parties shall use their best endeavours to amicably settle any dispute arising out of the Contract. Failing an attempt towards an amicable settlement, all disputes shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one (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, **[OPTION: if Subcontractors]** including any subcontract agreed hereunder. Subcontracts other than those specified in Article 3.1 below are expressly excluded.

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

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

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

Should any Subcontractor encounter serious difficulties in the process leading to: timely payment of due invoices (i.e. related to a milestone already achieved) to be made by the Subcontractor's direct customer (i.e. not ESA), or contractual coverage of activities already kicked-off, the said Subcontractor may directly contact the Agency at: indirectpayments@esa.int

In doing so, such Subcontractor shall attach the Standard Contact Form, available at: <https://esastar-publication.sso.esa.int/supportingDocumentation> properly filled in or provide the same information in the body of the email.

In case any Subcontractor has SME status, as per the definition of SMEs given by the European Commission: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>, the Contractor shall ensure that the relevant subcontract foresees an automatic grant of a 35% Advance Payment.

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

[END OPTION]

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

[OPTION: if Subcontractors]

Force Majeure event at Subcontractor's level shall be considered a case of Force Majeure for the performance of the Contractor's obligations, if the Contractor proves that the delay in the delivery of the equipment or works covered by the subcontract due to the Force Majeure event had an unavoidable impact on the final delivery dates stipulated in the Contract.

[END OPTION]

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:

The draft versions of the final documents as defined in section 4.4 of

2.3.1 **APPENDIX 1** shall be submitted for approval, in electronic format, to the Agency's Technical Officer specified herein, not later than two (2) weeks prior to the Final Review.

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

APPENDIX 1.

2.3.2 The Contract Closure Documentation shall be digitally submitted and approved in esa-star (<https://esastar-ccd.sso.esa.int/Home/Index>)

2.4 Other Deliverables

2.4.1 Software

The Contractor shall deliver the software, models and/or data files specified in section 4.4 of

APPENDIX 1 to the Agency's Technical Officer in the format(s) required by

APPENDIX 1, not later than as defined in the **APPENDIX 1**.



2.4.2 Warranty

Warranty shall apply to all deliverable items under this Contract with the exception of those commercial products purchased and delivered to the Agency together with their own warranty.

The Contractor's warranty obligations shall cover the cost incurred by the Contractor [and any Subcontractor(s)] to remove, replace, repair, update, correct, re-install and re-test, as the case may be, the defective items and shall include the production and delivery of the relevant updated documentation.

The Contractor's obligation does not extend to cases of defects to the items caused by the Agency through misuse or modification of the items without the Contractor's consent.

The warranty period shall run for a period of three (3) months from acceptance by the Agency and shall be extended by a period equivalent to that during which the items are not available to the Agency due to the defect having been detected or being corrected.



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 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.

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; and
- Contract Closure Documentation, digitally submitted and approved in esa-star.

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 [OPTION: if Subcontractor(s)]

and to the benefit of the Contractor’s Subcontractor(s). The Contractor shall be responsible for approving or rejecting, within ten (10) Days of receipt, the relevant Subcontractor(s)’ invoice(s) and related supporting documents (e.g. MACs, Cost Reports). The Contractor shall also be responsible for paying the accounts of its Subcontractor(s), for this Contract, in accordance with the applicable law and normal commercial practice. The Contractor shall indemnify the Agency against any claims arising from such Subcontractor(s), caused by the

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.

Contractor's failure to pay the Subcontractor(s). The Contractor shall supply to the Agency, upon request, evidence of the payment(s) made to its Subcontractor(s).

[END OPTION: if Subcontractor(s)]

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

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 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: VAT Exemption Certificate issued:

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: Exemption under national law:

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:

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

[END OPTION 2]**[OPTION 3:**

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

[END OPTION 3]**[OPTION 4:**

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 completion of PR and successful review and acceptance of all related deliverable items.	To + 4 months		
Progress (MS 2): Upon successful completion of DR and successful review and acceptance of all related deliverable items.	To + 12 months		
Final Settlement (MS 3): Upon the Agency's acceptance of all deliverable items due under the Contract and the Contractor's fulfilment of all other contractual obligations including submission of the Contract Closure Documentation.	To + 18 months	(not less than 10% of the total Contract price)	
TOTAL			

[OPTION:]

Advance Payment(s)³ and other Financial Conditions:

Prime (P)	Company Name	ESA Entity Code	Country (ISO code)	Advance Payment (in Euro)	Offset against ⁴	Offset by Euro	Condition for release of the Advance Payment
P				Amount	MS 1	Amount	Upon signature of the Contract by both Parties

[END OPTION]

³ Whenever an SME (as per definition in <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>) is involved as Prime or Subcontractor, it shall be entitled to a 35% Advance Payment of its part of the Contract price irrespective of any cash disbursement needs.

⁴ An SME has the right to request offset of the 35% advance at the end of the Contract, i.e. the last two milestones (ideally 25% at the last milestone and 10% at the preceding milestone), if this can be justified in view of the economic progress in the Contract.



[OPTION: if Subcontractor(s)]

For information purposes only, distribution by the Prime Contractor of ESA's payments between the Prime Contractor and the Subcontractor(s):

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

[SUB-OPTION: if the Advance Payment also applies to Subcontractor(s)]

For information purposes only, distribution by the Prime Contractor of ESA's Advance Payments between the Prime Contractor and the Subcontractor(s):

For information purposes only: Amounts in Euro for Contractor and Subcontractor(s)							
Prime (P) or (SI)	Company Name	ESA Entity Code	Country (ISO code)	Advance Payment (in Euro)	Offset against ⁵	Offset by Euro	Condition for release of the Advance Payment
P				Amount	MS ..	Amount	Upon signature of the Contract by both Parties
SI				Amount	MS ..	Amount	Upon signature of the Contract by both Parties
SI				Amount	MS ..	Amount	Upon signature of the Contract by both Parties

[END SUB-OPTION]
[END OPTION]

⁵ An SME has the right to request offset of the 35% advance at the end of the Contract, i.e. the last two milestones (ideally 25% at the last milestone and 10% at the preceding milestone), if this can be justified in view of the economic progress in the Contract.



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 Mr. Holger Krag, Head of the Space Safety Programme Office (H/OPS-S).

5.1.1 The Agency’s representatives are:

- a) **Mr/Ms(XXX-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	Ms/Mr	Ms/Mr	Ms/Mr (name of ACO) (Contractor)
Telephone No.	+xx xx xxx xxxx	+xx xx xxx xxxx	+xx xx xxx xxxx
Email Address	@esa.int	@esa.int	@esa.int
Mail address			

- b) **Mrs. Sabine Röttger (CIC-COM)** for contractual and administrative matters or a person duly authorised by 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	Mrs. Sabine Röttger	
Telephone No.	+49.6151.902951	
Email Address	Sabine.Roettger@esa.int	
Mail address	ESA/ESOC Robert-Bosch-Str. 5 64293 Darmstadt	

- 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.

[OPTION 1 or 2 below to be selected by the Contractor. N.B. electronic signature encompasses both, simple electronic signature (handwritten scanned) or the use of e-signing digital tools]

[OPTION 1: electronic signature using digital signatures only, both Parties to sign using e-signing digital tools]

The Parties agree that digital 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.

[END OPTION 1]

[OPTION 2: electronic signature. Each of the Parties can use either e-signing digital tools or simple electronic signature (handwritten scanned)]

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.

[END OPTION 2]

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:
- the performance of the Contract, including implementation, management, monitoring, audits and the fulfilment of the obligations set out in herein.
 - the management of the relationship of the Parties in relation to the Contract, notably for administrative, financial, audit or for communication purposes;
 - 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 0 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

The Agency will make available to the Contractor the item listed below:

<u>Item</u>	<u>Replacement Value</u>
Software	DELTA-4 latest licensable version

The Contractor shall confirm to the Agency its decision to use the item.

All Items Made Available (IMA) shall remain the property of the Agency and the Agency shall acquire ownership in all modifications, enhancements or other alterations made to the IMA.

The Contractor shall take responsibility for the IMA and their proper use, handling, maintenance, transport and storage with the level of care expected from an expert professional.

In case of loss of - or damage to the IMA, the Contractor will replace or repair or refund the IMA, to be decided by the Agency following consultation with the Contractor.

The Contractor shall use and access the IMA and any information provided in connection therewith exclusively for the purpose of achieving the objectives of this Contract and only for the duration of this Contract. This right ends automatically at the end of this Contract and the Contractor shall immediately thereafter return all IMA and all related information in whatever form to the Agency’s Technical Officer and delete all copies thereof as well as all related information. The Contractor shall neither distribute nor disclose the IMA and any such information to any third party.

The IMA mentioned above shall be made available to the Contractor under the terms and conditions set forth in the Licence Agreement, contained in **APPENDIX 5** to this Contract.

The Contractor shall include the IMA in the Inventory/Fixed Asset Record in accordance with the provisions of ARTICLE 7 below.

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 5.8.3 **Error! Reference source not found.** 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 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.

The Contractor agrees that the Agency may distribute any Work Results, including draft and/or partial deliverables, such as documentation and source code, both during and at the end of the execution of the Contract for the Agency's Own Requirements. The Contractor also agrees to distribute the intermediate and the final versions of the Work Results in compliance with the latest version of the ESA Software Community Licence weak copyleft (available under <https://essr.esa.int/license/list>). The Contractor shall ensure that the Work Results of the activity are compatible with the above ESA Community License. The Contractor also undertakes to act as focal point for the community of users coming into existence around the abovementioned product.

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

[Option A]

The Agency acknowledges that the Contractor will use Background Intellectual Property to achieve the objectives of this Contract.

The price agreed for this Contract includes all the fees relative to access to and use of the said Background Intellectual Property, including, but not limited to, the right to sublicense, by the Agency, for the purposes set forth in this Contract.

Any deliverable documents and reports containing Background Intellectual Property shall consist of distinct, appropriately marked and separable parts or volumes in order to precisely identify and segregate the Background Intellectual Property itself.

The above-mentioned Background Intellectual Property is identified as follows:

Exact name of BIPR Item	Owner	Description	Patent # or Ref./ Issue/ Revision/Version #	Contract/ Funding Details under which the IPR was created	Date of creation of the version of the BIPR listed here	Type of Licence	Affected deliverable with comments	Protected Format (Y/N)

The Background Intellectual Property owned by the Contractor or a Third Party shall remain the property of the owner.

The following conditions shall apply to Background Intellectual Property which the Contractor delivers together with, or as part of, the deliverable items due under this Contract:

Any Background Intellectual Property the Contractor may decide to use (in order to achieve the objectives of this Contract) and/or to include in the deliverables shall be provided in a format making it readily decipherable, accessible and compatible with the licensing scheme of the deliverable software, and related documents, as envisaged in Article 6.2.2) here above. The Contractor shall grant to the Agency, and/or ensure that the Agency be granted, all the necessary rights in this respect.

[End Option A]

[Option B]

The Contractor has confirmed that all results of this Contract (or any part thereof) shall be deemed and treated as not containing any Background Intellectual Property.

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.

[End Option B]

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. Customer Furnished Items and/or 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:



Appendix 2 to
ESA AO/1-13038/25/D/SR
ESA Contract No. 4000xxxxxx/xx/XX/XXX/xxx

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 relevant sections of the digital Contract Closure Documentation (CCD) in esa-star (<http://esastar-ccd.sso.esa.int>). The CCD shall not be finalised and signed before disposition of all items has been given by the Agency and recorded in the documentation.



Electronically/Digitally signed by the Parties to this Contract,

In:

In:

On:

On:

For

For the European Space Agency (ESA)

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

H. Krag
Head of the Space Safety Programme
Office



Appendix 2 to
ESA AO/1-13038/25/D/SR
Appendix 1 to
ESA Contract No. 4000xxxxxx/xx/XX/XXX/xxx

APPENDIX 1
STATEMENT OF WORK



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: [REDACTED]	
		ESA Contract No.: 4000XXXXXXXX/xx/XX/XXX/xxx	
CONTRACT CHANGE NOTICE No. [REDACTED]		DATE: [REDACTED]	
TITLE OF AREA AFFECTED (WORK PACKAGE ETC): [REDACTED]		WP REF: [REDACTED]	
		INITIATOR OF CHANGE: [REDACTED]	
DESCRIPTION OF CHANGE [REDACTED]			
REASON FOR CHANGE [REDACTED]			
PRICE BREAKDOWN (Currency)/PRICE-LEVEL			
EFFECT ON OTHER CONTRACT PROVISIONS [REDACTED]		START OF WORK [REDACTED]	
		END OF WORK [REDACTED]	
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

CONFIDENTIALITY UNDERTAKING

I, _____ **[insert full name]** an employee of _____ **[Company's name]**, assigned to carry out work in connection with the ESA Contract No. **4000xxxxxx/25/D/SR** (hereinafter “the Contract”) having been informed that in accordance with the Contract all documentation and other information of whatever kind and nature, to which I may be given access for the performance of my duties in the framework of the Contract, as well as all Work Results under the Contract shall be considered Proprietary Information, unless different protective security standards are specified in the Statement of Work, the respective documentation or information or otherwise, hereby undertake as follows:

1. Not to use, copy or reproduce or permit the use, copying or reproduction of any documentation or information of whatever kind and nature, which is not publicly available, obtained from the European Space Agency (or from other entities or persons cooperating with the Agency) as well as any documentation or information of whatever kind and nature produced under the Contract by _____ **[Company's name]**, myself, the Agency or an other entity or person cooperating with the Agency (together called “the Material”) other than for the proper use in connection and in accordance with the Contract.
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, reproduction, summary or extract thereof to anybody other than to:
 - a) Other employees or representatives of _____ **[Company's name]** 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 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.
2. Upon termination for any reason of my involvement in the Contract (including also the end of the Contract), to hand to the Agency’s Technical Officer all the Material including all copies, reproductions, summaries or extracts thereof in my possession at the time of such termination.
3. Not to use nor to disclose nor communicate either directly or indirectly to anybody any other information whether written or oral acquired during the course of the Contract, except with the prior written consent of the Agency.
4. Not to use, without the prior written consent of the Agency any of the Material or other information except for the purposes of the Contract.



Appendix 2 to
ESA AO/1-13038/25/D/SR
Appendix 4 to
ESA Contract No. 4000xxxxx/xx/XX/XXX/xxx

5. All rights and obligations resulting from this Confidentiality Undertaking shall continue also after the end of my involvement in the Contract as well as the end of the Contract.

Signature _____

(Company's personnel)

Witness _____

(Company's Representative
[insert function])

Date/Place _____



Appendix 2 to
ESA AO/1-13038/25/D/SR
Appendix 5 to
ESA Contract No. 4000xxxxx/xx/XX/XXX/xxx

APPENDIX 5
LICENCE AGREEMENT



Licence Agreement (Items made available by the Agency)

between

the **European Space Agency (ESA)**
(hereinafter called "the Agency" or "the Licensor")

located at 24 rue du Général Bertrand,
CS 30798, 75345 Paris CEDEX 7,
France

through its

European Space Operations Centre (ESOC)

located at Robert-Bosch-Strasse 5
64293 Darmstadt
Germany

represented by Mr. Josef Aschbacher, its Director General

For the purpose of this Agreement, the authorised representative of the Director General is Mr. H. Krag, the Head of the Space Safety Programme Office.

on the one part

and

[Company's name]
(hereinafter called "the Licensee")

whose Registered Office is at

represented by Mr. [representative, title/function]

on the other part

the following has been agreed:



The Third Party Owned Software distributed together with the Licensed Product as well as the Third Party Owned Software not distributed together with the Licensed Product are **not** part of the Licensed Product.

Beta Version

A Beta Version means a Licensed Product marked by the Licensor as a “Beta Version”, “Pre Release” or “Preliminary Release” on the media, on which the Licensed Product is made available. A Beta Version does not represent a final software product of Licensor and it may contain bugs, and may give rise to errors, and other problems that could cause system or other failures and data loss. For a Beta Version the special conditions in Article 8 apply.

Third Party Owned Software

The term refers to any other software product licensed under different terms and conditions of a 3rd party or of the Licensor.

Third Party Owned Software distributed together with the Licensed Product

On the media, on which the Licensed Product was distributed, there might be, for the convenience of the Licensee, a “List of Third Party Owned Software distributed together with the Licensed Product”. If this is the case, the following applies:

The Third Party Owned Software listed there and distributed together with the Licensed Product has been used at ESOC together with the Licensed Product. The Licensor does not warrant that the list of Third Party Owned Software distributed together with the Licensed Product is comprehensive or exhaustive.

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As described in Article 6 of this Licence Agreement, it is at the sole discretion of the Licensee whether or not to use any of the Third Party Owned Software not distributed together with the Licensed Product. Prior to any such use, the Licensee must procure himself the respective Third Party Owned Software, must obtain the respective licences to use this Third Party Owned Software and must comply during such use with the terms and conditions of such licences.

As described in Article 2 below, the Licensor has not verified and will not verify the Licensed Product before distribution to the Licensee. The list of Third Party Products distributed together with the Licensed Product may, therefore, be incomplete or incorrect. Also any Third Party Products distributed together with the Licensed Product but not contained on this list are not part of the Licensed Product and the above provisions shall equally apply to these Third Party Products.



Peaceful Purpose	As per ESA Convention and its interpretation by ESA's bodies.
Intellectual Property Rights (IPR)	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 trade marks, design rights, data base rights, topography rights, know how and trade secrets or equivalent rights or rights of action anywhere in the world.
Licence	An instrument by which a licensor grants permission to a licensee to install and use certain Intellectual Property (see above).
Subcontractor	Subcontractor means the subcontractors, if any, identified in the Reference Contract.
Sub-licensee	Sub-licensee means the Subcontractor(s) with which the Licensee has concluded a sub-licence agreement in accordance with Article 3.3 of this Licence Agreement.
Work Results	Work Results mean any incremental work in source code of the Licensed Product constituting modifications, enhancements, alterations, corrections, additions, extensions or improvements to the Licensed Product or any translation of the Licensed Product in any other computer language. Incremental work means here that what is gained or added to the Licensed Product.
Licence Agreement	Licence Agreement means this agreement concluded between the parties.

ARTICLE 2 - PREAMBLE

- 2.1 The Licensor has developed the Licensed Product solely for its own internal purposes and not for the specific purpose of the contractual requirements of the Reference Contract. However, on request of the Licensee, the Licensor is willing to grant a Licence for the Licensed Product to the Licensee on the terms and conditions of this Licence Agreement.
- 2.2 The Licensor has not tested and will not test the Licensed Product before providing it to the Licensee. The software may, therefore, have incomplete functions regarding the requirements of the Licensee or may still have several defects not yet identified by the Licensor or may not be suitable for the purposes of the Licensee. Subject to Article 5.4 of this Licence Agreement, the Licensor does not support and/or maintain the Licensed Product for the Licensee under this Licence Agreement.
- 2.3 The Licensee is aware of the above. Nevertheless, the Licensee wants to license the Licensed Product from the Licensor for its work under the Reference Contract and the Licensee will take appropriate measures to avoid the risks regarding the above.

ARTICLE 3 - GRANT OF LICENCE, LICENCE RESTRICTIONS

- 3.1 The Licensor provides the Licensed Product to the Licensee as an “Items Made Available by the Agency” in accordance with the Reference Contract and this Licence Agreement.
- 3.2 For the term of this Licence Agreement, the Licensor grants the Licensee, according to the provisions of this Licence Agreement a non-exclusive, non-transferable and revocable Licence, restricted to the territory of the ESA Member States:
 - (a) to make and install a reasonable number of copies of the Licensed Product to the extent necessary for the purposes of the Reference Contract;
 - (b) to use the Licensed Product solely for the purposes of the Reference Contract and in a manner consistent with the use limitations specified in this Licence Agreement;



- (c) to modify, enhance or make alterations of the Licensed Product exclusively for the purposes of and in connection with the Reference Contract, which the Licensee does on behalf of the Licensor and to the extent that is necessary to meet Licensee's obligations under the Reference Contract.
- 3.3 The Licensee is entitled to provide a Subcontractor with the Licensed Product and a Subcontractor shall be entitled to use the Licensed Product provided that such use is not in excess of the Licence granted to the Licensee under this Licence Agreement. Therefore, in such a case, the Licensee must make sure that the Subcontractor will be bound mutatis mutandis by the same terms and conditions as contained in this Licence Agreement by a written sub-licence agreement with the Licensee. The Licensee shall inform the Licensor about the name of the Sub- licensee and as soon such sub-licence agreement is concluded, a copy of such agreement with a Sub- licensee shall be transmitted to the Licensor. Any other sub-licensing is not permitted.
- 3.4 The Licensee shall not use, copy, distribute or modify the Licensed Product for any purpose other than to meet its obligations under the Reference Contract and all other means of use, sale, lease, sub-licence or transfer of the Licensed Product by the Licensee to other parties is expressly prohibited both during and after the duration of this Licence Agreement.

ARTICLE 4 - WORK RESULTS

All rights in or related to the Licensed Products are and shall remain the exclusive property of the Licensor or Licensor's licensors.

Any modifications, enhancements or alterations made by the Licensee to the Licensed Product shall be deemed Work Results and the Licensee shall assign and transfer full ownership of all Intellectual Property Rights in and to these Work Results to the Licensor free of charge.

In cases, where the transfer of ownership of all Intellectual Property Rights in and to any Work Results is legally not possible, the Licensee shall grant the Licensor an irrevocable and worldwide exclusive licence for the respective Work Results, including the grant of the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time or purpose and including the right to sub-licence to any third party. For the avoidance of doubt, no additional royalty fee shall be paid by the Licensor for such transfer of ownership or licence grant.

The intended purpose of the assignment and transfer of full ownership of all Intellectual Property Rights to the Licensor or the grant of the exclusive licence is to enable the Licensor to act as the full and only owner of the Work Results without any limitation.

ARTICLE 5 - LIMITATION OF LIABILITY; SUPPORT AND MAINTENANCE

- 5.1 The Licensee is aware of the fact that the Licensor has not tested the Licensed Product before providing it to the Licensee and the Licensed Product may, therefore, still have defects or may have incomplete functions regarding the requirements of Licensee.
- 5.2 Therefore, the Licensor gives no undertaking as to the adequacy and/or suitability and/or the completeness of the Licensed Product, for the purposes required by the Licensee under the Reference Contract.
- 5.3 The Licensor shall have no responsibility for the suitability of the Licensed Product for their intended purpose under the Reference Contract nor for their actual use and shall, therefore, in no event be liable for any damage resulting from the use or the inability to use the Licensed Product, even if the Licensor or any authorised representative of the Licensor has been informed of the possibility of such damage.
- 5.4 Under this Licence Agreement, the Licensor is not obliged to support and/or maintain the Licensed Product. However, in case the Licensee needs support regarding the installation or use of the Licensed Product or to maintain the Licensed Product because of any errors or malfunction, the Licensee may contact the Licensor and the Licensor may provide the Licensee with an offer for the requested support and/or maintenance on terms and conditions and against payment of a fee to be agreed between the parties.

ARTICLE 6 - THIRD PARTY OWNED SOFTWARE NOT DISTRIBUTED TOGETHER WITH THE LICENSED PRODUCT

On the media, on which the Licensed Product was distributed, there might be, for the convenience of the Licensee, a “List of Third Party Owned Software not distributed with the Licensed Product”. If this is the case, the following applies:

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ARTICLE 7 - THIRD PARTY OWNED SOFTWARE DISTRIBUTED TOGETHER WITH THE LICENSED PRODUCT

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ARTICLE 8 - BETA VERSION

In case the Licensor provides the Licensee with a Beta Version of a Licensed Product such Beta Version may contain bugs, and may give rise to errors, and other problems that could cause system or other failures and data loss. The Licensor does not warrant that a Beta Version is free of any defect.

Therefore it is the obligation of Licensee to install the Beta Version only in a separate test and development environment and not e.g. in its productive system environment. The Licensee shall make a data backup before installing a Beta Version.

ARTICLE 9 - EXPORT RESTRICTIONS

The Licensee warrants and shall ensure that the Licensed Product and, if any, the Third Party Owned Software distributed together with the Licensed Product and any other technical data or information, product, process, results or application received from the Licensor in connection with this Licence Agreement or resulting from the Reference Contract will only be transported, transferred or exported directly or indirectly to any country other than the country, in which the Licensee has its registered headquarter, without violation of any applicable law, including but not limited to all export control laws, regulations, rules and procedures and any relevant international agreements relating to the export of goods and/or services, as well as the relevant regulations of the Licensor and the provisions of the Reference Contract.

ARTICLE 10 - DISCLOSURE

- 10.1 Subject to 3.3 above, the Licensee is not authorised to disclose, make available or assign the Licensed Product, the Licence Agreement, or any part thereof, including back-up or other copies to any other party without the prior written consent of the Licensor, both during and after the duration of the Reference Contract.
- 10.2 Any wrongful disclosure of the Licensed Product or this Licence Agreement contrary to the terms and conditions of this Licence Agreement may require the Licensee to pay an indemnification to the Licensor and/or third parties.

- 10.3 The Licensee shall not disclose the Licensed Product or this Licence Agreement to any personnel of the Licensee other than those for whom such knowledge is essential for the purpose stated in this Licence Agreement and such disclosure to them shall be made only under conditions of strict confidentiality.

ARTICLE 11 - INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Licence Agreement does not implicitly or explicitly transfer any title or other right to the Licensed Product. The Licensee shall solely have the non-exclusive rights to the Licensed Product as set forth in this License Agreement.
- 11.2 The Licensor or Licensor's licensors remains the exclusive owner of all rights in the Licensed Product.

ARTICLE 12 - CONSIDERATION FOR LICENCE AND SERVICES

- 12.1 The Licensee shall not be required to pay the Licensor any licence fees for the licence granted for the Licensed Product.
- 12.2 The Licensor shall not be obliged to provide any support to the Licensee in the use of the Licensed Product.

ARTICLE 13 - INFRINGEMENT

- 13.1 The Licensee shall notify the Licensor immediately of any claim or notice of infringement of third party rights concerning the Licensed Product. The Licensor may at its discretion take steps within its competence to prevent or end a dispute and may at its discretion assist the Licensee to defend against any claim or notice of infringement or suit for infringement. At its discretion, the Licensor may conduct negotiations or assist the Licensee in conducting negotiations for the settlement of such infringement or suit. The Licensee shall offer the Licensor all reasonable assistance in connection with any such infringement, claim or notice of infringement.
- 13.2 If the Licensed Product is held to infringe or is believed by the Licensor to infringe any third party rights, the Licensor shall have the option in its free discretion, to (a) obtain the right for the Licensee to continue using the Licensed Product; or (b) replace or modify the Licensed Product so that it becomes non-infringing; or (c) terminate this Licence Agreement.
- 13.3 If a judgement is made against the Licensee by a court of competent jurisdiction and if as a result the Licensee cannot use the Licensed Product without infringing third party rights, either party may terminate this Licence Agreement with immediate effect forthwith by written notice.

13.4 In any event, the Licensor shall not be liable for any damages assessed against or incurred by the Licensee as a result of such judgement or any violation of third party rights in connection with the use of the Licensed Product or any inability or impossibility to use the Licensed Product, or the termination of this Licence Agreement.

ARTICLE 14 - TERM AND TERMINATION

14.1 This Licence Agreement shall enter into force on signature by the parties and shall remain in force until the completion of the Reference Contract, unless terminated earlier in accordance with the provisions contained herein. After the completion of the Reference Contract the Licence Agreement ends automatically without further notice.

14.2 The Licensee shall inform the Licensor annually on the anniversary of the date of signature of the Licence Agreement that the Licensed Product is still being used for the purpose it was supplied.

14.3 If the Licensee breaches any of the provisions of this Licence Agreement, the Licensor shall give notice of such default or breach to the Licensee. If the Licensee does not cure the default or breach within sixty (60) days from the date of its receipt of such notice, the Licence shall stand terminated and the Reference Contract itself may be terminated by the Licensor, after full consideration of all relevant circumstances, including the observations of the Licensee, and following a formal notification.

14.4 On termination of this Licence Agreement, for whatever reason, the Licence granted to the Licensee under this Licence Agreement ends and the Licensee shall immediately stop any use of the Licensed Product and the Licensee shall immediately either return the Licensed Product to the Licensor, or shall certify to the Licensor that he has stopped any use of the Licensed Product and has destroyed the Licensed Product and deleted all copies thereof and that there are no further copies in his possession.

14.5 Termination of this License Agreement entails automatic termination of any sublicense agreement. The Licensee shall immediately notify his Sub-licensee(s) about the termination and notify the Licensor thereof.

14.6 Termination shall not, however, release either party from its confidentiality obligations entered into under this Licence Agreement.

ARTICLE 15 - GOVERNING PROVISIONS

This Licence Agreement shall be subject to the provisions of the Reference Contract, to the extent that this Licence Agreement does not contain any explicit deviating provisions.



ARTICLE 16 - NOTICES

All notices referred to in or required by this Licence Agreement shall be in writing and shall be directed to the persons specified in Article 5, Section 5 of the Reference Contract.

The Licensee acknowledges that it has read and understood this Licence Agreement and that it accepts its terms and conditions.

Signed electronically by the Parties to this Licence Agreement.

In [Town]

In Darmstadt

On

On

For [Company's name]

For the European Space Agency (ESA)

[representative]
[title/function]

H. Krag
Head of the Space Safety Programme Office,
H/OPS-S