

Contract No. xxxxx/09/NL/CBI

with

[Contractor]

[title of Contract]

DRAFT CONTRACT

Between:

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

located at: 8-10 rue Mario-Nikis,
75015 Paris,
France,

represented by Mr Jean-Jacques Dordain, its Director General,

through its European Space Research and Technology Centre

located at Keplerlaan 1, 2201 AZ Noordwijk, The Netherlands

of the one part,

and:

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

whose Registered Office is at:

.....
.....
.....

represented by:....., its.....,

of the other part,

the following has been agreed:

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ARTICLE 1 - SUBJECT OF THE CONTRACT - APPLICABLE DOCUMENTS

- 1.1 In the frame of the 2008 Announcement of Opportunity under the Czech Republic Industry Incentive Scheme, the Contractor undertakes to[insert TOPIC], to deliver the [hardware], [software] [and] documentation as described herein, and to make an oral presentation of the results.
- 1.2 The work shall be performed in accordance with the following documents, listed in order of precedence, in case of conflict:
- a) The specific Articles of this Contract and its Appendixes 2 (Contract Change Procedure), 4 (Payment Plan), on the same level;
 - b) The General Clauses and Conditions for ESA Contracts (herein referred to as GCC), ESA/C/290 rev. 6, not attached hereto but known to both parties, as amended by Article 4 hereunder;
 - c) Appendix 3 hereto: Statement of Invention and Inventory;
 - d) Appendix 1 hereto: The Standard Requirements for Management, Reporting, Meetings and Deliverables;
 - e) The Specification for the production of ESA Study Contract Reports, not attached hereto but known to both parties, and the standard cover page for the ESA Contract Study Report attached hereto as Appendix 5;
 - f) The Minutes of the negotiation meeting held on ref.;
 - g) The Contractor's Proposal reference dated, not attached hereto but known to both parties.

ARTICLE 2 - PRICE

- 2.1 The price of this Contract is a Firm Fixed Price, as defined in Sub-Clause 2.1 of Annex I to the General Conditions, amounting to:

... EUR
(... EURO),

broken down per Contractor as follows:

Contractor [Name]	... EUR (...EURO)
Subcontractor [Name]	... EUR (...EURO)
Subcontractor [Name]	... EUR (...EURO)
Subcontractor [Name]	... EUR (...EURO)

- 2.2 The above amount does not include any taxes or duties in the Member States of the Agency.

[OPTION: FOR LICENSES]

- 2.3 The price is deemed to include all applicable fees for licences to be purchased and delivered in the frame of the Contract, indicating the Agency as the end user.
- 2.4 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS 2000, to the addressees specified in Article 4, Clause 7 of the Contract.

ARTICLE 3 - PLACE AND DATES OF DELIVERY - MEETINGS

3.1 Place and Dates of Delivery

3.1.1 Documents

The Contractor shall, during the performance of this Contract, deliver all documentation and reports in the required number of paper copies and in an electronic file. These shall be sent to the Agency's Technical Officer mentioned in Article 4, Clause 5, unless otherwise specified, in accordance with the following specific provisions:

[OPTION 1: Deliverables for Study Contract]

3.1.1.1 The draft versions of the Final Report defined in Appendix 1, section 4.1.1 of Management Requirements for Meetings and Deliverables (MRMD) and Executive Summary Report defined in section 4.1.4 of MRMD shall be submitted for approval, in electronic format, to the Agency's Technical Officer specified in Article 4, Sub-Clause 7.1 of the Contract, not later than [Date to be filled in]

3.1.1.2 The finalised versions of the documents mentioned above shall be issued not later than four (4) weeks after the Agency's approval of the draft versions in seven (7) paper copies and seven (7) copies on CD-ROM, of which:

- five (5) paper copies and five (5) copies on CD-ROM shall be sent to the Agency's Technical Officer,
- two (2) paper copies and two (2) copies on CD-ROM to The Information, Documentation and Knowledge Centre at ESTEC Postbus 299, 2200 AG Noordwijk, The Netherlands.

3.1.1.3 The Executive Summary shall also be submitted in HTML format, suitable for publication on the Agency's webpage.

[OPTION 2: Deliverables for Research and Development Contract]

3.1.1.1 The draft versions of the Final Report defined in section 4.1.1 of the MRMD and Abstract defined in section 4.1.5 of the MRMD, shall be submitted for approval, in electronic format, to the Agency's Technical Officer specified in Article 4, Sub-Clause 7.1 of the Contract, not later than [... Date to be filled in]

3.1.1.2 The finalised versions thereof shall be issued not later than four weeks after the Agency's approval of the draft versions, in seven (7) paper copies and seven (7) copies on CD-ROM, of which:

- five (5) paper copies and five (5) copies on CD-ROM shall be sent to the Agency's Technical Officer specified in Article 4, Sub-Clause 7.1 of the Contract; and
- two (2) paper copies and two (2) copies on CD-ROM to The Information, Documentation and Knowledge Centre at ESTEC Postbus 299, 2200 AG Noordwijk, The Netherlands.

[SUPPLEMENTARY OPTION]

3.1.1.[x] At the same time as delivery of the final documents, the Technical Data Package defined in section 4.1.2 of MRMD, containing all approved Technical Notes, shall be delivered in two (2) paper copies (one (1) unbound and one (1) bound) and three (3) copies on CD-ROM to the Agency's Technical Officer specified in Article 4, Sub-Clause 7.1 of the Contract.

3.1.2 Software

The [source and] object code relevant to the software, mathematical models, data files, design files and computer programmes, shall be delivered to the Agency's Technical Officer specified in Article 4, Sub-Clause 7.1 of the Contract, not later than [OPTION: date to be filled in].

NOTE: *The corresponding source code license shall be agreed upon at the negotiation stage*

3.1.3 Hardware

Any hardware built or purchased under the contract shall be delivered to the Agency's Technical Officer, unless otherwise agreed in writing by the agency's representatives.

3.2 Meetings

All meetings, reviews and presentations shall be held as specified below:

Event	Location	Foreseen date

ARTICLE 4 - GENERAL CONDITIONS

The General Clauses and Conditions for ESA Contracts, rev. 6 (GCC) shall apply to this Contract with the following amendments or replacements. The specific conditions in this Contract shall prevail over the GCC.

PART I: CONDITIONS APPLICABLE TO ESA CONTRACTS

CLAUSE 2 - APPROVAL

For the purpose of this Contract the authorised representative of the Director General is:
Mr. Eric Morel de Westgaver
Head of the Procurement Department

CLAUSE 5 - AGENCY'S REPRESENTATIVES - INSPECTIONS

The Agency's representatives are:

1. Mr/Mrs/Ms.....for technical matters or a person duly authorised by him/her. ("Technical Officer");
2. Mrs. C. Binedell (RES-PTS) for contractual and administrative matters or a person duly authorised by her. ("Contract Officer").

CLAUSE 7: COMMUNICATIONS

1. All correspondence for the Agency shall be addressed to:
ESTEC - European Space Research and Technology Centre
Keplerlaan 1
2200 AZ Noordwijk, The Netherlands

a) For technical matters:

	To:	With copy to:
Name		
Phone		
Fax		
e-mail		

b) For contractual and administrative matters (with the exception of invoices as mentioned in Clause 22):

	To:	With copy to:
Name		
Phone		
Fax		
e-mail		

2. All correspondence for the Contractor shall be sent to:

.....

a) For technical matters:

	To:	With copy to:
Name		
Phone		
Fax		
e-mail		

b) For contractual and administrative matters:

	To:	With copy to:
Name		
Phone		
Fax		
e-mail		

CLAUSE 10 - EQUIPMENT, SUPPLIES AND TECHNICAL DOCUMENTS MADE AVAILABLE BY THE AGENCY TO THE CONTRACTOR

[OPTION 1]

It is not foreseen that the Agency will make available to the Contractor any equipment, supplies or technical documents.

[OPTION 2]

Clause 10 shall apply to, which shall be made available by the Agency to the Contractor as specified in Appendix 1.

For the purposes of Sub-Clause 10.2, the value of the [item is] [items are].

Item	Replacement Value

CLAUSE 12 - APPLICABLE LAW

The Contract shall be governed by the laws of the Czech Republic.

CLAUSE 13 – ARBITRATION

The arbitration proceedings referred to in Clause 13 shall take place in [Town] and shall be conducted in the language of the Contract.

Sub-Clause 13.3 is amended as follows:

Any dispute arising from the Contract shall be finally settled by one or more arbitrators, assigned in conformity with the Rules of Arbitration of the International Chamber of Commerce (ICC). The conduct of such proceedings shall be in accordance with the ICC rules in force at the time arbitration is requested by either of the parties.

CLAUSE 17 - PRICING

Sub-Clauses 17.3 and 17.4 do not apply.

CLAUSE 19 - PACKING AND TRANSPORT EXPENSES

The following provision is added to Clause 19:

All deliverables shall be correctly packed in order to ensure their safety during transportation, and sent to the address designated in Article 4, Clause 7. Reference to this Contract and the description of the goods shall be clearly marked on all packages and indicated on all shipping documents.

CLAUSES 20 AND 21 - ADVANCES, PROGRESS AND FINAL PAYMENTS

Clauses 20 and 21 shall be implemented as follows:

1. All payments shall be made according to the provisions hereunder:

1.1 Payments shall be made within thirty (30) calendar days of receipt at ESTEC of the documents listed below and fulfilment of the requirements as specified:

1.2 ADVANCE PAYMENT:

Invoice(s): to be submitted after signature of this Contract by both parties.

1.3 PROGRESS PAYMENT:

- Invoice(s);
- Actual achievement of the milestones as defined in the Payment Plan specified in Appendix 4 hereto.

1.4 FINAL SETTLEMENT:

- Invoice(s);
- Receipt and/or acceptance, by the Agency, of all deliverable items, of the services to be rendered and other obligations to be fulfilled, in accordance with the terms of this Contract, in particular, with the provisions of Article 3 (Places and Dates of Delivery), Article 4, Clause 29 (Acceptance), but apart from Article 4, Clause 30 (Guarantees) and continuing obligations under Part II of the GCC;
- On behalf of the full industrial consortium: a list recapitulating all Intellectual Property Rights resulting from work undertaken within the scope of the Contract and which are suitable for registration in the meaning of Clause 40 of the GCC which are registered, intended for registration or not intended for registration; or, a formal statement that no Intellectual Property Right(s) suitable for registration in the above meaning has(ve) been generated, or is/are intended to be registered, using the template provided in Appendix 3 hereto. The term “invention” in Sub-Clause 21.1 of the GCC shall be construed as making reference to the definition of “Intellectual Property Rights” in Clause 36.2 of the GCC;
- List of Inventory as per Annex 1 of Appendix 3 hereto.

In conjunction with the provisions of Clause 30 hereunder, the [partial] execution of the Final Settlement shall be delayed until the expiry of the guarantee period, as defined in the Payment Plan specified in Appendix 4 hereto.

1.5 PAYMENT TO PRIME CONTRACTOR, IF SUB-CONTRACTORS ARE INVOLVED: The Agency shall credit the account of the Contractor to its benefit and to the benefit of its Sub-Contractor(s). The Contractor shall be responsible for paying the accounts of its Sub-Contractor(s), for this Contract, in a timely and proper manner, in accordance with the applicable law and commercial practice. The Contractor shall indemnify the Agency against any claims arising from such Sub-Contractor(s), caused by the Contractor’s failure to pay same. The Contractor shall supply to the Agency, on

- request, evidence of payments made to its Sub-Contractor(s). The Agency reserves the right to visit the Contractor's and/or Sub-Contractor('s)(s') premises and ascertain the progress of the work being performed under the Contract, prior to making the progress payment concerned.
2. The Payment Plan applicable to this Contract is specified in Appendix 4 hereto.
 3. If applicable, invoices shall show all due taxes or duties on a separate page.
 4. The period for payment shall begin on the date of receipt of all documents, and of fulfilment of the requirements referred to in paragraphs 1.2 to 1.4 above, at ESTEC Financial Operations.
 5. As regards the term "invention" in Clause 21.1 of the GCC, it shall be construed as making reference to the definition of "Registered Intellectual Property Rights" in Sub-Clause 36.2 of the GCC.
 6. 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 effect exceptionally a partial payment at its discretion not exceeding the value of the work performed at the date of payment.

CLAUSE 22 - INVOICES, PLACE AND CURRENCY OF PAYMENT

Clause 22 shall be implemented as follows:

1. The Contractor is required to submit invoices for all payments due under the Contract.
- 2.1 The Contractor shall ensure that all invoices, including those payable by ESA directly to its subcontractors, are submitted for payment exclusively through the Agency's EFIS system (<http://efis.esa.int>). If the Contractor has no access to the Agency's EFIS system at the time of signature of the present Contract, an immediate request for an EFIS user account shall be made by the Contractor to the ESA Helpdesk (idthelp@esa.int), specifying a contact name, the company name, and the ESA Contract number.
- 2.2 Should the Contractor find the Agency's EFIS System technically inoperative at the moment of submission of the invoices, the Contractor may submit invoices in paper format in five (5) copies to the ESA Financial Operations Department of the responsible ESA-establishment, ESA-ESTEC Finance, Central Invoice Registration Office, together with justifying documentation as required by the Contract.

- 2.3 The Contractor undertakes to submit and to have its Sub-Contractor(s) – in case of direct payments by ESA – submit complete invoices and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in EFIS.

[OPTION 1: VAT IS DUE]

The VAT rate and its amount shall be clearly and separately stated in the submitted invoices.

[OPTION 2: VAT EXEMPTION CERTIFICATE ISSUED]

In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to the serial number indicated on the VAT Exemption Form which the Agency provided to the Contractor when forwarding two originals of the present Contract for signature. On invoices submitted via EFIS, the number shall be put in the respective field ‘VAT Exemption Serial Nr.’

3. Payments shall be made by the Agency in EURO to the account specified by the Contractor. Such 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 Clauses 20 and 21, paragraph 1.1 above.
4. Sub-Clause 22.2 of the ESA GCC, second sentence, is deleted.
5. Any special charges related to the execution of payments will be borne by the Contractor.
6. Any questions concerning the operation of EFIS shall be addressed to the ESA Helpdesk (idthelp@esa.int).

CLAUSE 25 - SUB-CONTRACTS

[OPTION 1]

No sub-contracts are foreseen.

[OPTION 2]

Clause 25 shall be implemented as follows:

The Agency agrees that part of the work is sub-contracted to the following companies/organisations:

..... [full name]

CLAUSE 26 - CHANGES/MODIFICATIONS TO PROJECTS, ENGINEERING AND SPECIFICATIONS

The Contract Change Procedure attached as Appendix 2 hereto shall apply to all changes to be agreed under this Contract.

CLAUSE 28 - PENALTIES FOR LATE DELIVERIES

[OPTION 1]

Penalties for late delivery shall not apply.

[OPTION 2]

1. Penalties, as provided for under Clause 28, shall apply to the following deliverable items, and shall be calculated as follows:

Deliverables	Date	Penalised Value
Delivery of		[total or % of (phase) price]
Delivery of		[total or % of (phase) price]

2. Penalties shall be calculated in accordance with the scale laid down in paragraph 1.2 of Annex II to the GCC.
3. For the purpose of Sub-Clause 28.3, it is agreed that penalties shall apply even though the Contractor meets the required delivery date(s), if the Agency rejects the subject of the delivery. In such case, penalties shall apply with effect from the date of rejection or from the date of delivery, whichever is the later.
4. Exceptionally, pursuant to Annex II of the GCC, paragraph 1.2, the Agency may defer the application of penalties for a period of not more than forty days, nevertheless, if the delay exceeds that period, the penalty will be applied in its entirety. Should such decision be made, it will be notified in writing to the Contractor.

CLAUSE 29 - ACCEPTANCE AND REJECTION

Clause 29 is implemented as follows:

1. As regards documentation and reports, should the Agency's Technical Officer not accept the deliverables from the Contractor, (s)he shall so inform the Contractor with the relevant justification. If no decision has been notified to the Contractor within one month of receipt by the Agency of the deliverables, such shall be considered as having been accepted.

[OPTION: Hardware]

2. As regards hardware, the acceptance of the deliverable items shall be performed by the Technical Officer in accordance with the acceptance procedure [proposed by the Contractor], [and agreed with the Agency].

[OPTION 1: Software]

3. As regards software, the acceptance of the deliverable items shall be performed by the Technical Officer in accordance with the acceptance procedure [proposed by the Contractor and agreed with the Agency].
4. Rejected deliverables must be rendered compliant with the Agency's requirements and presented for acceptance within a time scale fixed in writing by the Agency.
5. Unless otherwise stated by the Agency in writing, acceptance by the Agency becomes effective with the formal closure of all open issues / exceptions stated in the official document formalising acceptance.

CLAUSE 30 - GUARANTEES

[OPTION]

Clause 30 shall not apply.

[OPTION: Hardware]

Clause 30 applies. The following Sub-Clause is added:

1. The hardware shall be under guarantee for a period of twelve (12) months, starting from the date of the Agency's acceptance thereof.

[OPTION: Software]

Clause 30 applies. The following Sub-Claus[es] is[are] added:

- 2.1 The software shall be under guarantee for a period of six (6), starting from the date of acceptance by the Agency. During the guarantee period, the Contractor shall correct free-of-charge any software bug or problem reported by the Agency. The guarantee period shall terminate after upon expiry of the above-mentioned period, or when all corrections in their final form have been provided to the satisfaction of the Technical Officer, whichever is the later.
- 2.2 The software guarantee period shall be automatically suspended during the period of time elapsed between the notification of a problem by the Agency and its satisfactory resolution by the Contractor.

**PART II: CONDITIONS CONCERNING INTELLECTUAL PROPERTY RIGHTS
FOR ESA STUDY, RESEARCH AND DEVELOPMENT CONTRACTS**

For the purpose of this Contract:

- Part II, Option A of the GCC shall apply, as modified by the special provisions below.
- The free licenses provided for the benefit of ESA in the present Part II provisions, shall be deemed granted through signature of the present Contract and without the need to implement a separate license.

The following provisions are added:

CLAUSE 36 – GENERAL

The following provision is added to sub-clause 36.2:

The term “documentation” shall also include data files, CAD files, EXCEL files and similar electronic files, which shall not be considered as “software” in the sense of Clause 42.

The electronic files containing these items shall be delivered to the Agency in the format agreed with the ESA technical officer.

CLAUSE 37 – INFORMATION TO BE PROVIDED

The following provision is added to sub- clause 37.2:

The Contractor shall not mark any documents as “Proprietary Information” unless agreed in advance with the Agency. Any request from the Contractor shall be submitted accompanied by an appropriate justification.

CLAUSE 38 – DISCLOSURE

The following provision is added to sub-clause 38.2:

The access rights granted to the Agency’s employees under sub-clause 38.2 are hereby extended to Contractor staff hired by ESA to provide technical, management, legal or administrative support to ESA as long as they have signed an engagement of confidentiality.

CLAUSE 42 – SOFTWARE

[OPTION: IF THE DELIVERY OF SOURCE CODE TO ESA IS REQUIRED]

SUB-CLAUSE 42.4:

Note: See also note under 3.1.2 above.

The Contractor shall deliver directly to the Agency the software in source code form, it being understood that the Agency shall use the source code under specific provisions, including confidentiality aspects if required, to be agreed under a licence to be negotiated in conjunction with this contract.

CLAUSE 43 – BACKGROUND INTELLECTUAL PROPERTY RIGHTS

In pursuance of the requirements of Clause 43.1, the following is recorded:

a)

[OPTION 1]:

In view of the objectives of this Contract, the Contractor shall not make use of any Background Information.

[OPTION 2]:

[The Agency, on the basis of evidence provided by the Contractor, recognises the following information to be provided by the Contractor as Background Information:

.....
.....

b) Notwithstanding the second paragraph of clause 43.1, the following is agreed: if the Contractor, after the signature of the contract, invokes the existence of any additional Background Information to be used for the purposes of the present Contract, the Contractor shall provide conclusive evidence to the Agency of the existence of this Background Information and shall justify the reasons why the existence of this Background Information was not invoked before the Contract signature.

If conclusive evidence and appropriate justification are provided by the Contractor, the Parties shall formalise a Contract Change Notice to specify in detail which Information has been recognised as Background Information.

Conversely, if such evidence and justification are not provided, all information delivered shall be deemed as having been generated in the frame of the Contract.

43.4 and 43.7:

For the purpose of Sub-Clauses 43.4 and 43.7, the term “Agency Project” shall refer to all present and future activities/projects of the Agency for which the results of the present Contract are relevant.

CLAUSE 47 – RE-SUPPLY

Clause 47 shall apply with the following additions:

- a) The Contractor shall during the five years following the end of the activities of the present contract, maintain the qualification, and supply the items and/or technologies developed and/or qualified under the present contract to ESA projects and ESA activities and to individuals and entities in the ESA Member States, Participating States, Cooperating or Associate States at reasonable market prices and conditions in a non-discriminatory manner.
- b) During the activities of the present contract and during the five years following the end of those activities, the Contractor shall maintain in Europe a full production capacity of the components and technologies developed or qualified in the frame of the present contract.
- c) The Contractor guarantees that, at the moment of the signature of the present contract, the concerned components or technologies are not subject to ITAR restrictions and, furthermore, that the Contractor will restrain himself from any action and will take all necessary measures to avoid that those components and technologies fall under ITAR restrictions or similar export restrictions.

CLAUSE 49 - TRANSFER OUTSIDE THE MEMBER STATES

The request for a transfer outside the Member States shall be addressed to the Agency's Technology and Product Transfer Board via the Secretary of the Board, Legal Department, ESA Headquarters, 8-10 rue Mario Nikis, 75015 Paris, with a copy to the technical and administrative representatives of the Agency identified in Article 4, Clause 5.

The terms of Clause 49 shall not be construed as restricting the Agency's right to disseminate information and documents to non Member States as specified in Sub-Clause 37.4 bis b) above.

ARTICLE 5 - KEY PERSONNEL

- 5.1 The work shall be executed by the key personnel so nominated in the Contractor's Proposal (ref.... or as per Article 1, para. 2) (and the Sub-Contractor(s)).
- 5.2 Any replacement or part-time assignment to other tasks of such key personnel, to the extent that they are not available as per Article 5.1 above, requires the prior written approval of the Agency's representatives mentioned in Article 4, Clause 5. Appropriate requests shall be accompanied by a justification for the proposed change and by a comprehensive CV of the new key personnel proposed. The Agency's approval of the replacement or part-time assignment will not be unreasonably withheld provided the replacement personnel proposed by the Contractor has equivalent or better qualification and experience than those to be replaced. In the affirmative case, ESA's representatives mentioned in Article 4 Clause 5 will supply the Contractor with a written approval.
- 5.3 The Agency may, for justified reasons, ask for a replacement of key personnel. Such request, signed by the Agency's representatives, shall be presented in writing to the Contractor who shall then, within one (1) month, propose suitably qualified replacement personnel.
- 5.4 The failure of the Contractor to provide adequately qualified and experienced key personnel, as specified in paragraphs 1 to 3 above, shall be considered as a failure to meet the technical requirements of the Contract that thereby seriously jeopardising the continuation of the Contract, as understood by Sub-Clause 33.1 (a) (i) of the GCC.

ARTICLE 6 - ITEMS PRODUCED OR PURCHASED UNDER THE CONTRACT

- 6.1 The following provisions apply to any items other than those which are specified in Article 3 of the Contract to be delivered to the Agency or which are included in a list of deliverable items referred to in Article 3.
- 6.2 The title to the property of any items produced under the Contract, including electronic components, special jigs, tools, test equipment, raw materials, and paid for by the Contract, with an individual or batch value in the national currency equivalent to or above [3000 euros], shall pass to the Agency unless otherwise decided by the latter.
As a result, all such items are to be delivered to the Agency at the end of the Contract; they might be delivered at an earlier stage if so requested by the Agency without this causing a problem to the Contractor for completing the work specified in the Contract.
- 6.3 The Contractor shall maintain an inventory of all such items (called “Contract inventory”) and he shall mark those items as falling under this Article of the Contract.
The inventory shall be updated and made available to the Agency during the execution of the Contract. A final issue of that inventory shall be submitted with the final contractual deliverables.
If that inventory includes also any of those items which fall within the scope of Article 3 of the Contract, the latter are to be clearly set apart.
- 6.4 Upon completion of the work specified in the Contract, the Agency shall take decisions regarding the final destination and the final owner of each of the items listed in the Contract inventory, apart from those which are governed by the provisions of Article 3.
The Agency shall be free to choose amongst the following options with respect to final destination and to final owner:
- a) the right to claim delivery to the Agency and transfer of ownership – with issue of appropriate instructions concerning packing and shipment (at the Contractor’s expenses),
 - b) the right to claim transfer of ownership and to negotiate with the Contractor a loan agreement if the latter is interested in keeping and using an item that the Agency wants to acquire without delay – with loan conditions making the Contractor responsible for the custody, the delayed delivery and their risks (at the Contractor’s expenses),
 - c) the right to extend the custody of an item by the Contractor (for instance: as a preservation measure for further work contracted by the Agency) and to postpone its delivery to the Agency and the associated transfer of ownership – on conditions to be negotiated,
 - d) the renunciation of any rights to claim delivery and to claim transfer of ownership, leaving definitively the item in the possession and in the ownership of the Contractor - with or without financial compensation for the Agency (e.g. repurchase by the Contractor) and with or without special instruction,
 - e) the right to request the Contractor to dispose of an item – on conditions to be negotiated. The decisions taken by the Agency shall lead to instructions or negotiations, as the case may be.

- 6.5 The Contractor shall comply with the Agency's instructions and with the agreements referred to in paragraph 6.4.
- 6.6 This process will be recorded as per the Inventory List in Appendix 3 hereto.

ARTICLE 7 – ENTRY INTO FORCE AND COMPLETION OF THE CONTRACT.
ADDITIONAL SPECIAL CONDITIONS

7.1 Entry into Force, Completion of the Contract

The present Contract shall enter into force upon signature by the duly authorised representatives of both parties hereto. The Agency shall sign the Contract and subsequently submit it to the Contractor for signature. Any modifications of originals occurring after ESA's signature shall be enforceable only if agreed between the Parties and duly countersigned by both Parties.

Unless otherwise agreed by the parties or cancelled in accordance with Clauses 31 to 34 of the ESA GCC, the Contract shall run until the completion of the work under the Contract; delivery and acceptance of all deliverable items; proper close-out of any outstanding administrative and financial issues; and, execution by the Agency of the final payment.

The placing of the present Contract shall not be construed as creating any rights to the Contractor for continuation of this Contract or of the Project.

7.2 Continuing Rights and Obligations under the Contract

Completion or cancellation of the present Contract shall not affect the parties' continuing rights and obligations regarding any relevant provisions of this Contract, in particular, those relating to Clauses 9, 14, 15, 16 and Part II of the GCC.

7.3 Special Provisions

Should any part or provision of this Contract be determined to be prohibited, or rendered void or unenforceable, by any legislation or other cause, the remaining terms and conditions of the Contract shall be interpreted in an equitable manner in order to maintain the balance of the parties' respective obligations. The validity and enforceability of the Contract as a whole shall not be affected.

The waiver by either party hereto of its rights under this Contract in respect of any breach default or omission by the other in the performance or observance of any term or provision of this Contract, shall neither be deemed nor imply a waiver of its rights in respect of any other breach default or omission by the other.

Done in two originals,

In:

In:

On:

On:

For.....

For the European Space Agency (ESA)

STANDARD REQUIREMENTS FOR
MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES

This document contains the standard requirements for Management, Reporting, Meetings and Deliverables for contracts to be placed by the Agency.

1. MANAGEMENT

1.1 GENERAL

The Contractor shall implement effective and economical management for the project. His nominated Project Manager shall be responsible for the management and execution of the work to be performed and, in the case of a consortium, for the coordination and control of the consortium's work.

1.2 COMMUNICATIONS

All communications to the Agency shall be addressed to the Agency's representatives nominated in Clauses 5 and 7 of the contract.

1.3 ACCESS

- a. During the course of the contract the Agency shall be afforded free access to any plan, procedure, specification or other documentation relevant to the programme of work. Areas and equipment used during the development/testing activities associated with the contract shall also be available for inspection and audit.
- b. The Contractor shall notify the Agency at least three weeks before the start of any test programme, or as mutually agreed, in order to enable the Agency to select those tests that it wishes to witness. The Agency shall notify the Contractor of its visit at least one week in advance.

2. REPORTING

2.1 MINUTES OF MEETING

- a. The Contractor is responsible for the preparation and distribution of minutes of meetings (see ECSS-M-20 section 5.3.1 for more details) held in connection with the contract. Electronic and paper versions shall be issued and distributed to all participants, to the Agency's technical representative (4 copies) and to the ESA Contracts Officer (1 copy), not later than 10 days after the meeting concerned.
- b. The minutes shall clearly identify all agreements made and actions accepted at the meeting together with an update of the Action Item List (AIL) and the Document List. The minutes shall be signed.

Note: This clause may be restricted to progress meetings if specifically expressed.

2.2 DOCUMENTS LIST

The Contractor shall create and maintain a Document List, recording all the documents produced during the work, including reports, specifications, plans and minutes. The list shall indicate the document reference (with unique identifier), type of document, date of issue, status (draft or approved by the Agency), confidentiality level and distribution. This list shall be maintained under configuration control.

2.3 ACTION ITEM LIST (AIL)

The Contractor shall maintain an Action Item List (AIL, see ECSS-M-20 5.3.2 for more details), recording all actions agreed with the Agency. Each item shall be uniquely identified with reference to the minutes of the meeting at which the action was agreed and will record generation date, due date, originator and actionnee. The AIL shall be reviewed at each progress meeting.

2.4 BAR-CHART SCHEDULE

- a. The Contractor shall be responsible for maintaining the bar-chart for work carried out under the contract, as agreed at the kick-off meeting.
- b. The Contractor shall present an up-to-date chart for review at all consequent meetings, indicating the current status of the contract activity (WP's completed, documents delivered, etc.).
- c. Modifications of the schedule shall be contractually binding only if approved in writing by the Agency's representative (as defined in Clauses 5 and 7 of the contract) for contractual and administrative matters.

2.5 RISK REGISTER

- a. The Contractor shall be responsible for maintaining a risk register agreed at the kick-off meeting. This register shall register identify potential risks, their likelihood and severity, and propose meaningful mitigation measures (see ECSS-M-00-03B for more details).
- b. The Contractor shall present an up-to-date of the risk register in his progress reports for review at monthly progress meetings.

2.6 PROGRESS REPORTS

- a. Every month, the Contractor shall provide a progress report to the Agency's representatives, covering the activities carried out under the contract (see ECSS-M-20 section 5.3.3 for more details). This report shall refer to the current activities shown on the latest issued bar-chart and shall give:
 - a.1 action items completed during the reporting period
 - a.2 status report on all long lead or critical delivery items
 - a.3 description of progress : actual vs schedule, milestones and events accomplished
 - a.4 reasons for slippages and/or problem areas, if any, and corrective actions planned and/or taken, with revised completion date per activity
 - a.5 events anticipated during the next reporting period (e.g. milestones reached)
 - a.6 expected date for major schedule items
 - a.7 milestone payment status
 - a.8 status of risks

2.7 PROBLEM NOTIFICATION

The Contractor shall notify the Agency's representatives (Technical Officer and Contracts Officer) of any problem likely to have a major effect on the time schedule of the work or to significantly impact the scope of the work to be performed (due to e.g. procurement problems, unavailability of facilities or resources, etc.).

2.8 TECHNICAL DOCUMENTATION

- a. As they become available and not later than the dates in the delivery plan, the Contractor shall submit for the Agency's approval technical notes, engineering drawings, manufacturing plans, test plans, test procedures, specifications and Task/WP reports.
- b. Technical documentation to be discussed at a meeting with the Agency shall be submitted two weeks prior to the meeting.
- c. Technical documents from subcontractors shall be submitted to the Agency only after review and acceptance by the Contractor and shall be passed to the Agency via the Contractor's formal interface to the Agency.
- d. Tests carried out under the contract shall be performed according to test plans and test procedures approved by the Agency's Technical Officer (see ECSS-E-10 Part 2A and ECSS-Q-20A for more details).

3. MEETINGS

- a. The kick-off meeting shall take place at the Agency's premises.
- b. Progress meetings shall be held at approximately 2- to 3-monthly intervals, alternating between Agency premises and Contractor premises.
- c. The final presentation shall take place at the Agency's premises.
- d. Additional meetings may be requested either by the Agency or the Contractor.
- e. The Contractor shall give to the Agency prior notice of any meetings with third parties to be held in connection with the contract. The Agency reserves the right of participation in such meetings.
- f. With due notice to the Contractor the Agency reserves the right to invite third parties to meetings to facilitate information exchange.
- g. For all meetings with the Agency the Contractor shall ensure that proper notice is given at least 2 weeks in advance. For all other meetings, the Contractor shall inform the Agency, which reserves the right to participate. The Contractor is responsible for ensuring the participation of his personnel and those of the sub-contractor(s), as needed.
- h. For each meeting the Contractor shall propose an agenda in electronic form and shall compile and distribute handouts of any presentation given at the meeting.

4. DELIVERABLES

This section specifies the generic deliverables that can be envisaged. The actual list of deliverables under the contract is specified in the Contract, which may include, delete or add deliverables with respect to those specified in this Chapter.

4.1 DOCUMENTATION

- a. In addition to the documents to be delivered according to section 2 here above, the following documentation shall also be deliverable. In the case of alternative choices herein, the Contract specifies which ones are applicable.
- b. All documentation deliverables mentioned hereunder (including all their constituent parts) shall also be delivered in electronic form in a format agreed by the Agency (PDF format and the native format, and in other exchange formats where relevant (e.g. CAD, drawings, databases)).
- c. All the documentation shall be delivered on computer readable media (e.g. CD-ROM, DVD-ROM) as agreed by the Agency with in addition 2 paper copies.

- d. The draft version of the documentation shall be sent to the technical officer in 3 copies not later than two weeks before the documentation is to be presented. The final version shall be provided in a number of copies specified in the Contract.

4.1.1.FINAL REPORT

- a. The Final Report shall provide a complete description of all the work done during the study and shall be self-standing, not requiring to be read in conjunction with reports previously issued. It shall cover the whole scope of the study, i.e. a comprehensive introduction of the context, a description of the programme of work and report on the activities performed and the main results achieved.
- b. For phased contracts a Final Report shall be produced at the end of each phase in accordance with the above definition, describing the work and results of that phase and previous phases. It becomes the Final Report in case the Agency decides not to proceed with the subsequent phase(s).

4.1.2. TECHNICAL DATA PACKAGE

Each (design and development) contract shall be completed with a Technical Data Package. For a contract with phases, the Technical Data Package shall be provided at the end of a phase in the case that the Agency decides not to proceed with the next phase. The Technical Data Package consists of the final versions of all approved technical documents.

4.1.3. SUMMARY REPORT

For each (design and development) contract one Summary Report shall be produced. It shall summarise the findings of the contract concisely and, informatively. The Summary Report shall be approximately 20 pages or 6000 words.

NOTE: The Agency may request the contractor to produce the Summary Report in the form of a paper suitable for publishing in a technical journal.

4.1.4 EXECUTIVE SUMMARY REPORT

The Executive Summary Report shall concisely summarise the findings of the contract. It shall be suitable for non-experts in the field and should also be appropriate for publication. For this reason, it shall not exceed 5 pages of text and 10 pages in total (1500 to 3000 words).

4.1.5. ABSTRACT

Each (study) contract shall also be completed with an Abstract, summarising the work performed. It shall be suitable for application at symposia or technical journals, normally not exceeding 3 to 4 pages of text with coloured illustrations or photographs if appropriate.

4.1.6. BROCHURE

A Brochure is intended for marketing purposes. It shall be concise, including a short description of the work performed and applications of the development, a photograph or functional drawing if applicable, technical fact sheet, estimate of availability (delivery time) and a contact point for marketing purposes.

It shall contain 1 or 2 pages of text (i.e. up to about 700 words).

4.1.7. PHOTOGRAPHIC DOCUMENTATION

Photographic documentation comprises photographs of hardware under manufacture showing major progress, as well as of tests and test set-ups. Videos presenting the functioning of hardware/test set-up and relating test activities may also be included in this category.

4.2. HARDWARE

Hardware (incl. test equipment and control electronics) built or purchased under the contract, together with an Operation Manual, shall be a deliverable item after completion of the associated activities at the Contractor's premises, unless otherwise agreed in writing by the Agency.

4.3 COMPUTER PROGRAMS AND MODELS

Computer programmes, mathematical models of any type (e.g. closed-form, worksheets, XML, CAD/CAE) and HDL models developed or procured under the contract shall be a deliverable, unless the Agency agrees otherwise in writing. Re-used or proprietary software embedded in the deliverable product and required for its correct functioning shall also be deliverable.

4.4 PROJECT WEB PAGE

The Contractor shall produce a Project Web Page which shall be suitable for public internet access.

5. COMMERCIAL EVALUATION

5.1 COMMERCIAL EVALUATION FOR THE TECHNOLOGY TRANSFER PROGRAMME

The Agency has a Technology Transfer Programme aimed at stimulating the wider use of technology developed within the European space research community (see also <http://www.esa.int/SPECIALS/TTP2/>). The goal of this programme is to promote the transfer of innovative technology from space to non-space applications.

In this case, the Commercial Evaluation is a report containing an analysis and evaluation of the potential in the non-space market of the output (products) of the contract.

The commercial evaluation report shall identify the commercial applications that could result from:

- i) the output of the subject activity (hardware, software, documentation) and/or
- ii) the output of the subject activity after additional development to meet the requirements of potential commercial users and/or
- iii) a development carried out in parallel to activities covered by the subject activity. As far as this point is concerned, results should be available as early as possible, e.g. at the 1st progress meeting, in order to enable the Agency to take decisions early enough to benefit from the advantages of a parallel development.

In addition the Report shall identify industrial financing or funds from national or international programs or agencies, available for developments ii) and/or iii) foregoing. Unless the Contractor himself intends to undertake such commercialisation, he shall, as far as practicable, provide a list of potentially interested companies.

5.2 COMMERCIAL EVALUATION (GENERIC CASE)

The Commercial Evaluation is a report containing an analysis and evaluation of the potential in the space market of the output (products) of the contract.

The report shall identify the maturity of the output of the subject activity with respect to the market and, if applicable, describe the required additional work and the level of funding required for the product to reach a marketable level.

APPENDIX 2: CONTRACT CHANGE PROCEDURE

A Contract Change Procedure shall apply for the preparation, evaluation, approval and implementation of alterations to the tasks to be performed under this Contract.

1. Introduction of a Change

For all changes, whether requested by the Agency or initiated by the Contractor, the Contractor shall submit a contract change proposal that shall contain, as a minimum:

- The Contractor's name and the 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, WBS, etc.)
- The reason for the change
- The price breakdown in € if any (breakdown by company, phase, etc., including PSS-A2 and PSS-A8 forms)
- 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 ensure that each Contract Change Proposal is fully co-ordinated with the above requirements and that all implications of the change have been considered. The Contractor shall, on request of the Agency, provide additional documentary evidence.

2. Approval or Rejection of the Contract Change Notices

Upon receipt of a Contract Change Proposal, the Agency shall consider it as regards its acceptability, or as needed coordinate amendments with the Contractor. Should a Contract Change Proposal be rejected for any reason, the Contractor shall be informed accordingly, together with the reasons for the rejection. At the request of either party, the proposed change may be discussed at a Change Review Board, consisting of both the Contract Officer and the Technical Officer of each party.

3. Implementation and Status of Approved Change Notices

Upon signature of a Contract Change Notice (CCN) by both parties, the CCN has immediate effect and constitutes a binding contractual agreement. The Contractor shall implement the change in accordance with the implementation dates agreed.

If the Agency considers it necessary, approved CCNs may subsequently be integrated into a Rider to the Contract.

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

APPENDIX 3: STATEMENT OF INVENTION AND INVENTORY

Contract Number: Contract Subject:Date:

Inventions

[OPTION 1: NO INVENTION]

In accordance with the provisions of the above Contract,[Company] hereby certifies both on its own behalf and that of its consortium/Sub-Contractor(s), that no Intellectual Property Right(s) has(ve) been registered in the course of or resulting from work undertaken for the purpose of this Contract.

[OPTION 2: INVENTION]

In accordance with the provisions of the above Contract,[Company] hereby certifies both on its own behalf and that of its consortium/Sub-Contractor(s) that the following Intellectual Property Right(s) has(ve) been registered in the course of or resulting from work undertaken for the purpose of this Contract:

.....

The Agency's rights on such Registered Intellectual Property Rights shall be in accordance with the ESA GCC Part II provisions as amended by the above Contract.

Inventory

[OPTION 1: NO INVENTORY ITEMS]

No inventory items have been purchased under the Contract by the Contractor and/or its Sub-Contractor(s).

[OPTION 2: INVENTORY ITEMS]

Any inventory items, purchased under the Contract by the Contractor and/or its Sub-Contractor(s) are listed in the List of Inventory Items, Annex 1, attached hereto. The Contractor certifies that all its obligations with regard to inventory have been fulfilled. The Agency will inform the Contractor of its decision with respect to disposal of inventory items.

Customer Furnished Items

Any Customer Furnished Items, made available to Contractor and/or its Sub-Contractor(s) under the Contract by the Agency are listed in the List of Customer Furnished Items attached as Annex 2 hereto.

[OPTION 1: ALL CFI INCORPORATED]

The Contractor confirms that the CFIs specified in Annex 2 hereto have been returned to the Agency.

[OPTION 2: NOT ALL CFI INCORPORATED]

The Contractor proposes to keep [OPTION: for its Sub-Contractor(s) to keep] the CFIs specified in Annex 2 hereto in Custody for the Agency for further ESA work.

For the Contractor,.....:

[authorised representative(s) of the Contractor]

ANNEX: Inventory List and List of Customer Furnished Items to be completed by the Contractor

ANNEX 1 – Inventory List

Item name	Part/ Serial reference number	Location	Value	ESA DECISION		
				Deliver to ESA	Sell or Dispose of	Leave in (Sub-) Contractor's Custody

ANNEX 2 – Customer Furnished Items

Item name	ESA Inventory Number	Location	Value	ESA DECISION		
				Confirmation of Receipt	Deliver	Leave at (Sub-) Contractor's Disposal

-
- To be completed by ESA
 - To be completed by ESA

APPENDIX 5: STANDARD COVER PAGE FOR ESA STUDY CONTRACT REPORTS

ESA STUDY CONTRACT REPORT - SPECIMEN		
No ESA Study Contract Report will be accepted unless this sheet is inserted at the beginning of each volume of the Report.		
ESA Contract No:	SUBJECT:	CONTRACTOR:
* ESA CR()No:	No. of Volumes:.... This is Volume No:....	CONTRACTOR'S REFERENCE:
ABSTRACT:		
The work described in this report was done under ESA Contract. Responsibility for the contents resides in the author or organisation that prepared it.		
Names of authors:		
** NAME OF ESA STUDY MANAGER:	** ESA BUDGET HEADING:	
DIV:		
DIRECTORATE:		

* Sections to be completed by ESA
 ** Information to be provided by ESA Study Manager