#### TYVAK INTERNATIONAL

**HERA CUBESAT 2 PROGRAMME**

PROCUREMENT CONTRACT 4000131925/20/NL/GLC-S-GLI

Between:

TYVAK INTERNATIONAL SRL, a company located in Italy, Via Orvieto 19, 10149 Torino, represented by Marco Villa, CEO

(hereinafter called "the Prime Contractor" or "TYVAK "),

and:

Institute of Geology of the Czech Academy of Sciences, located in Rozvojová 269, Prague 6 165 00, represented by Tomáš Přikryl, Director

(hereinafter called "the Contractor" or "GLI "),

the following has been agreed:

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## PREAMBLE

Whereas:

* + - The European Space Agency (hereinafter referred to as “the Agency” or “ESA”) is implementing its Hera Mission Second Cubesat Phase B/C/D/E1 Programme (hereinafter referred to as “**Programme**”) as part of the Hera Cubesat Implementation Phase; and
		- The European Space Agency has selected TYVAK INTERNATIONAL SRL as Prime Contractor; and
		- The Agency has selected the Prime Contractor to develop, manufacture, integrate into the Hera spacecraft, support to launch and carry out the Near Erath operations of the Second CubeSat, to deliver the hardware, software and documentation as described herein, and to make an oral presentation of the results (hereinafter referred to as the "**Project**"); and
		- The Contractor has submitted contributions to the TVK-E10258 Proposal “Hera Cubesat 2” in response to the Prime Contractor' Request for Proposal; and
		- The Prime Contractor is now willing to subcontract such activities to the Contractor through the present contract.

#### Now, therefore, the Parties hereto have agreed as follows:

## ARTICLE 1 - SUBJECT OF THE CONTRACT - APPLICABLE DOCUMENTS - CONTRACTORS OBLIGATIONS

##### 1.1. Subject of the Contract

The Contractor shall perform the work as defined in Appendix C hereto relating to the Project, in accordance with the tasks description and the requirements of this Contract (hereinafter referred to as the "**Contract**"), and perform the work as defined in the Appendix C (hereinafter referred to as the “**Work**”), hereto and hereafter summarized:

|  |  |  |
| --- | --- | --- |
| **WP ID** | **WP description** | **Ref. ESA SOW** |
| AB 305 | ASPECT DPU On-board algorithms requirements definition and dataset testing | AB-T3 |

##### Phasing

* + 1. The Work shall be performed in Phases as follows:
			- Phase A/B covers all activities of ASPECT DPU On-board algorithms requirements definition and dataset testing, and all related activities specified in Appendix C hereto, including any necessary pre-development, procurement of hardware and software models, if necessary
			- Phase C/D covers all activities related to documentation, updates and support to the Prime and other Partners, and all related activities specified in Appendix C hereto

These Phases are described in more detail within the Statement of Work (Appendix C).

* + 1. The Prime Contractor reserves the right not to proceed with each of the abovementioned Phases following completion of the preceding phase.
		2. The Prime Contractor and the Agency will not assume financial liability for any of the abovementioned Phases unless prior authorization to start the relevant Phase has been notified, in writing, by the Prime Contractor’ representatives nominated in Clause 5 of Article 5 to the Contractor.
		3. The decision whether to proceed with a subsequent Phase or not shall be taken among others after completion of the preceding Phase and after acceptance, by the Prime Contractor, of the Deliverables due under such preceding Phase.
		4. Notwithstanding this, the Contractor shall perform its obligations, during Phase A/B, with a view to secure compliance with its commitment for Phase C/D and in particular ensure that the Deliverables or part thereof covered by Phase C/D are completed by no later than any planned completion date specified in the Statement of Work.

This implies in particular, but not only, that the Contractor undertakes, subject to prior written authorisation of the Prime Contractor, to start performing any activity related to Phase C/D at any time that shall be required for meeting the delivery dates agreed with the Prime Contractor.

* + 1. Should the Prime Contractor decide not to proceed with the Work at the end of Phase A/B, the Prime Contractor shall not be obliged to pay the compensation foreseen in Clause 31.3 of the General Clauses and Conditions for ESA Contracts.

##### Applicable Documents

The Work shall be performed in accordance with the following documents, which constitute an integral part hereof and are listed in order of precedence, in case of conflict, below:

* + - The Articles of this Contract
		- Appendix A Financial Appendix
		- Appendix B The General Clauses and Conditions for ESA Contracts (herein referred to as the “GCC”), ref. ESA/REG/002 rev2 not attached hereto but known to both parties and available on [xxxxxxxxxx](http://emits.esa.int/) "Reference Documentation", "Administrative Documents", as amended by this Contract.
		- Appendix C SOW and technical attachments (including in particular DISL, Deliverable Items and Services List)
		- Appendix E Contract Close-out Layout
		- Appendix F Inventory Fixed Asset Record
		- Appendix G Contract Change Notice Template
		- Appendix H The Statement of Work, reference ESA-TEC-SOW- 017336, issue 1, revision 0, dated 10/03/2020;
		- Appendix J: PMAC Certificate

For the avoidance of doubt, reference herein to a document shall be deemed to constitute a reference to such document including its specific applicable documents and its annex, and the Work shall, when delivered, be in accordance with the contractual baseline as specified above (hereafter referred to as the “**Contractual Baseline**”).

Changes to the Contractual Baseline shall be governed by the provisions of Article 6. The Contractor shall not deviate from these requirements until formally authorized to do so in writing by the Prime Contractor.

##### Management Provisions

* + 1. GENERAL MANAGEMENT PROVISIONS

In the discharge of his obligations under this Contract, the Contractor shall exercise an effective management in compliance with the management requirements of the contract as defined in Appendix H ~~K~~ and in particular shall:

* + - 1. afford to the Prime Contractor and the Agency full visibility into the performance of the Contractor tasks, the selection of his Subcontractors (if applicable), the management of his Subcontractors and the performance of their tasks and the right to participate as observers in negotiations with such Subcontractors. This shall include

access to all documentation associated with the execution of the Contract under the conditions set forth under Part II of the GCC as modified by this Contract.

* + - 1. demonstrate to the Prime Contractor and the Agency that the requirements are met and the manner in which they are met. The Contractor shall not conclude waivers or deviations which potentially impact compliance with the Contractual Baseline without first obtaining the approval of the Prime Contractor.
			2. notify the Prime Contractor of all Changes notified to him by Subcontractors even if the Contractor considers that such Changes have no impact on this Contract and the Prime Contractors requirements.

v) accept that the Agency and/or the Prime Contractor at their discretion may participate in all formal progress meetings and reviews at all levels of contracting, and shall be timely invited to any formal meetings and reviews.

* + 1. COORDINATION ACTIVITIES

The Prime Contractor shall ensure the timely co-ordination of any and all activities with the following entities:

* + - 1. The Agency;
			2. OHB Systems AG and affiliates
			3. CNES and affiliates
			4. ISIS Space and affiliates
			5. GomSpace A/S and affiliates
			6. All other subcontractors under the Prime Contract

In the discharge of his obligations under this Contract, the Contractor shall not make, unless expressly authorised to do so by the Representatives of the Prime Contractor as identified under in Article 5, Clause 5, direct contact with the parties identified here above.

##### Additional Technical Assistance

In addition to the baseline activities, the Contractor shall provide such technical support as may be required by the Prime Contractor or by the Agency (such as post-delivery support, storage) through the Prime Contractor on terms no more onerous for the Prime Contractor than those on which similar work is undertaken under the terms of the present Contract, to be agreed between the Parties following the procedure foreseen in Article 6.

##### Previous Contracts - No Undertakings

No previous and/or parallel contracts shall entail any liability or implicit obligation whatsoever for the Prime Contractor and/or the Agency with respect to their output or impact on the performance of the present Contract or parts thereof.

## ARTICLE 2 - DELIVERY

##### Delivery Dates

The Work contractual delivery dates and review dates and place are as follows:

* + - Work Delivery Dates and place as specified in SOW - Appendix C.
		- Work Review Dates and place as specified in SOW - Appendix C.

The Contractor shall, during the performance of this Contract, deliver all documentation and reports specified in Appendix C, in an electronic file. These shall be sent to the TYVAK Program Manager, unless otherwise specified, in accordance with the following specific provisions:

* + 1. The draft versions of the final documents shall be submitted for approval, in electronic searchable, indexed and not encrypted original (WORD) format, to the TYVAK Program Manager, not later than three (3) weeks prior to any Review/Milestone as specified in Appendix C.
		2. The finalised versions thereof shall be issued in electronic searchable, indexed and not encrypted original (WORD) format not later than three (3) days after the approval of the draft versions and shall be sent by email to the TYVAK Program Manager
		3. At the same time as delivery of the final documents, the Technical Data Package, containing all approved Technical Notes (if any), shall be delivered by email in an electronic searchable, indexed and not encrypted original (WORD) format to the Tyvak Program Manager
		4. Hardware (Flight Items). No Hardware delivery is expected.
		5. Software and Hardware (Non- Flight Items): The Software, mathematical models, data files, design and computer programmes and the Non-Flight Hardware shall be delivered to the TYVAK Program Manager, not later than five (5) months after the Program Phase C/D Kick-Off.
		6. Contract Closure Documentation: The signed Contract Closure Documentation (Appendix 3, Annex A) shall be delivered in one (1) set of documentation each, to the TYVAK Program Manager not later than two (2) weeks before the time of submitting the invoice(s) for the Final Settlement.

##### Deliverable Items List

The Deliverables specified in the Deliverable Items List included in Appendix C hereto shall be available as necessary to meet programme schedule requirements and delivered in Europe nominally, with the exception of those items agreed not to become the property of the Agency or otherwise disposed of, as foreseen in Article 4.4 below, at the request of the Prime Contractor.

## ARTICLE 3 - PRICE & PAYMENT

##### Price type

The price type of this Contract is:

Firm Fixed Price (FFP), as defined in Section 2.1 of Annex II to the GCC for ESA Contracts.

##### Price of the Contract

* + 1. TOTAL PRICE

The total price of this Contract amounts to

**100,000.00 EUR, (one hundred thousand EURO),**

broken down per Phases as follows:

* + - * For Phase A/B

The total price for Phase A/B is:

#### 100,000.00 EUR

* + - * For Phase C/D:

The total price for Phase C/D,is:

#### not applicable

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. The price is further deemed to include any and all licence fees payable according to Clause 43.6 and 43.7 of the GCC.

* + 1. PRICE CHANGES

A change in the price, or in the apportionment of the price as set forth in Appendix A hereto, can only be made in accordance with the change procedure defined in Article 5, Clause 13 hereto.

* + 1. TAXES

The price is inclusive of all taxes, duties and/or similar charges of any nature whatsoever levied, assessed, charged or collected, for or in connection with the delivery of all Work, services and data delivered or furnished under the Contract, but does not include any Value Added Tax (VAT).

VAT to be charged according the applicable tax laws.

* + 1. INCOTERMS

The price is Delivered Duty Paid for all Deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS 2010, to the addressee(s) specified in the Contract. Reference to INCOTERMS in this provision is exclusively for the purpose of price definition.

##### Payments (Payment of the Contractor by the Prime Contractor)

All payments shall be made in accordance with the payment plan as set forth in Appendix 1 (Payment Plan). Clauses 28 and 29 of the General Clauses and Conditions shall not apply.

* + 1. ADVANCE PAYMENT

The advance payment constitutes a debt of the Contractor to the Prime Contractor until it has been set-off against subsequent milestones as shown in Appendix A hereto. The advance payment shall nominally be set-off against the first progress payment and the remaining amount, if any, against the next following milestone. The advance payment shall not offset completely one milestone. The advance payment shall be considered with a view to aim at neutral cash flow of the Milestone Payment Plan at the time of signature of the subcontract. Specific provisions apply with respect to advance payment to subcontractors having SME status.

Advance Payment Request (APR) is to be submitted as follows:

* + - * After signature of this Contract by both Parties;
		1. PROCESS FOR ACCEPTANCE OR REJECTION OF A MILESTONE (PMAC PROCESS)

Any milestone in the payment plan shall be considered as a successfully completed milestone if all the Work related to such milestone has been successfully performed in accordance with the Contract.

A signed PMAC (Payment Milestone Achievement Certificate) shall be submitted by the Contractor as per Appendix K, with all the supporting documentation (“PMAC”) including the written statement from the Prime Contractor authorised Technical Officer contained in

e.g. minutes of meeting confirming the achievement of the milestone (”Prime Written Statement”).

The Prime Contractor has a maximum of ten (10) working Days to approve and sign the PMAC or reject it. If the Prime Contractor determines that a milestone is not a successfully completed milestone, the Prime Contractor shall reject the PMAC and notify the reasons for such determination. The Contractor shall correct all the deficiencies to the satisfaction of the Prime Contractor in accordance with mutually agreed timeframe and corrective actions.

* + 1. INVOICING

The Contractor shall, for the milestone defined in the payment plan, submit a properly certified invoice together with the Prime Written Statement (herein the “Properly Certified Invoice”) to the Prime Contractor at the same time (on the same day) of the PMAC under Article 3.4.2.

If the Prime Contractor determines that either (i) an invoice issued by the Contractor is not a Properly Certified Invoice, or (ii) that the invoice is not accompanied with the Prime Written Statement or (iii) that the PMAC is missing, then the Prime Contractor shall notify the Contractor in writing of such invoice rejection with all reasons thereof within ten (10) working days from the invoice submission date. Such invoice shall not be eligible for further

acceptance and payment by the Prime Contractor and shall be sent back to the Contractor for re-issuance and re-submittal in compliance with the present Article 3.

* + 1. WITHHOLDING / PARTIAL PAYMENTS

In the event that the achievement of a Milestone is delayed but the milestone is partially met at the Milestone planning date foreseen, the Contractor may as an exception, request the Prime Contractor to effect a payment against an approved PMAC of the partially achieved milestone, not exceeding the value of the Work performed at the date of payment.

If a Milestone is achieved with only minor actions outstanding, a partial payment may be considered. In cases where the milestone is not achieved or partially achieved the Prime Contractor may, at its discretion, withhold payments in part (effecting a payment against an approved PMAC of the partially achieved milestone, not exceeding the value of the Work performed at the date of payment) or in full until such time that the milestone has been achieved. Such withholding of payment shall not give rise to any claim from the Contractor and/or Subcontractor concerning financial losses due to such withholding.

In the above cases where a partial payment is agreed, the relevant invoice - if already submitted - shall be withdrawn and the Contractor shall submit a dedicated invoice in line with the agreed partial payment amount not exceeding the value of the Work performed at the date of approving the PMAC.

* + 1. PAYMENT IMPLEMENTATION

Payments will be made by the Prime Contractor within sixty (60) calendar days from the Date of Submission. The Date of Submission is defined as the Working Day following the day of receipt by the Prime Contractor of the PMAC signed by the Contractor or the day of receipt of the Properly Certified Invoice submitted by the Contractor as defined in 3.4.3 above, whichever the latest. For the sake of clarity this timeframe for payments shall not run and the invoice shall not be eligible for further acceptance and payment in case (i) an invoice issued by the Contractor is not a Properly Certified Invoice, or (ii) a milestone is not a successfully completed milestone or (iii) the PMAC is not signed as per Article 3.4.2.

All payments shall be made in Euro by wire transfer to the Contractor’s bank account specified on the invoice. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code).

Any amount to be paid, credited or refunded by the Contractor to the Prime Contractor under this Contract may be deducted by the Prime Contractor from any payment due or become due by the Prime Contractor to the Contractor under the Contract.

* + 1. PAYMENT’S VISIBILITY AND ASSOCIATED RULES

The Contractor shall be responsible for paying the accounts of its Subcontractors for this Contract in accordance with the applicable law and normal commercial practices.

The Contractor shall hold harmless and indemnify Prime Contractor and/or the Agency against any claims arising from such Subcontractor(s), caused by the Contractor’s failure to pay its Subcontractor(s) an invoice which is due.

The Prime Contractor reserves the right to visit the Contractor’s and its Subcontractors’ premises (subject to article 7.5) and ascertain the progress of the Work being performed

under the Contract, prior to making the relevant progress payment. The Agency can be invited to such visits on a case by case basis.

##### Payment Charges

Any special charges related to the execution of payments will be borne by the Contractor.

##### Payment Of Change Notices

Payment of agreed Change Notices will be made in accordance with the payment plans established and approved for each Change Notice. Such payments plans shall be submitted with each Change Notice for review by the Change Review Board, and shall be synchronised, as far as possible, with the payment plans already defined in Appendix A hereto.

##### Contractor's Invoices Obligations

The Contractor shall send invoice accompanied with the corresponding Prime Written Statement and PMAC with appropriate supporting documentation as defined in 3.4.2 above to:

*TYVAK Administration Department:*

Each invoice shall contain the following information:

* Prime Contractor VAT registration number: ***[IT 11291460019];***
* Contractor's VAT registration number: ***CZ67985831***
* name of the Project;
* identification number of the Contract;
* identification of the required payment (milestone definition, number, date and amount);
* name and address of the Bank to be credited together with the relevant Bank account number;
* place of performance of invoiced Work;
* place of delivery of invoiced Work.
* Identification of the number of VAT Exemption Certificate (if any)

## ARTICLE 4 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS

* 1. The following provisions apply to any items other than those items which fall within the scope of Article 2 of the Contract.
	2. The Contractor shall specify, record, manage and control any and all Customer items and ESA Fixed Assets under Construction that are subject of this Contract. Such items are:
1. items produced or purchased under the Contract, including electronic components, special jigs, tools, test equipment, and which are paid for under the Contract with an individual or batch value (value of group of items in the national currency equivalent to, or above 5,000 Euro;
2. if any, items identified as becoming ESA Fixed Assets in Article 3 above or in a subsequent CCN;
3. if any, Customer Furnished Items (see Article 5 Clause 11 of the contract) and/or Items made available by the Agency (see Article 5 Clause 12 of the contract).
	1. The Contractor shall operate an inventory control system of all above mentioned items and shall mark them as falling under this Article of the Contract.
	2. The Contractor shall, as part of the Inventory Control System, maintain an Inventory/Fixed Asset Record (in an electronic tool of his choice) which shall, as a minimum, contain the information as shown in Appendix 3 to this Contract.
	3. 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 record shall be submitted with the final contractual deliverables as foreseen in Appendix 3 to this Contract.
	4. 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.
	5. Items, for which no place of delivery has been identified in Article 2 of this Contract, are subject to the following provisions.

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

1. 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;
2. 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);
3. 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;
4. 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; and
5. the right to request the Contractor to dispose of an item on conditions to be negotiated. Should the Agency decide to transfer an ESA Fixed Asset to a third party or to dispose of the Fixed Asset, the Contractor shall provide the full inventory information of the Asset to the Agency and complete the transfer or disposal forms to be provided by the Agency upon request by the Contractor. The information to be given by the Contractor in the forms shall be agreed with the Agency. The decisions taken by the Agency shall lead to instructions or negotiations, as the case may be and the results shall be recorded in the relevant sections of the Contract Closure Documentation (CCD) as found in Annex A to Appendix 2 of the Contract. The CCD shall not be finalised and signed before a disposition of all items has been given by the Agency and recorded in the documentation.

## ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC

The GCC for ESA contracts apply to this Contract with the following complements and amendments. The specific conditions in this Contract shall prevail over the GCC.

Unless differently explicitly stated in the present Article 5, although the text of the General Conditions refers to the roles and the responsibilities between Agency and the Contractor, in the scope of the present Contract wherever you read the "Agency" it has to be considered as replaced by "the Prime Contractor", with the exception of:

* Clauses 6, 8.3, 8.4, 24, 27.4, 29, Part II (with the amendments hereunder) and Annex I where "Agency" means "the European Space Agency", and
* Clauses 8.2, 8.5, 10.4, 11.8, 18, 26 and 38 where "Agency" means "the European Space Agency, through the Prime Contractor, and the Prime Contractor".

and the relevant clauses shall be interpreted accordingly,

* Where submission to and approval from the Agency is required, this will be done through the Prime Contractor for the purpose of the Contract.

##### PART I: CONDITIONS APPLICABLE TO ESA CONTRACTS

CLAUSE 4: ORIGINALS OF THE CONTRACTS

The following provision is added to Clause 4 of the GCC:

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.

CLAUSE 5: THE PARTIES' REPRESENTATIVES

Sub-clause 5.1: The Prime Contractor' representatives The Prime Contractor' representatives are:

1. xxxxxxxxxx for technical matters or a person duly authorised by him/her ("Technical Officer"). All correspondence for technical matters will be addressed to:

|  |  |  |
| --- | --- | --- |
|  | To: | With copy to: |
| Name |  |  |
| Telephone No. |  |  |
| Fax No. | n/a | n/a |
| E-mail Address |  |  |
|  |  |

1. xxxxxxxxx for contractual and administrative matters or a person duly authorised by him/her. ("Contract Officer"). All correspondence for contractual and administrative matters (with exception of invoices as mentioned in Article 3.4) will be addressed to:

|  |  |  |
| --- | --- | --- |
|  | To: | With copy to: |
| Name |  |  |
| Telephone No. |  |  |
| Fax No. | n/a | n/a |
| E-mail Address |  |  |
|  |  |  |

1. Personal Data Protection matters shall be addressed to the Data Protection contact point as follows:

|  |  |
| --- | --- |
| Name |  |
| Telephone No. |  |
| e-mail address |  |
| Mail Address | TYVAK INTERNATIONAL SRL. Via Orvieto 19, 10149 Torino - TO - ITALY |

Sub-clause 5.2: The Contractor's representatives The Contractor's representatives are:

1. xxxxxxxxxxx for technical matters or a person duly authorised by his ("Technical Officer"). All correspondence for technical matters will be addressed to:

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

|  |  |  |
| --- | --- | --- |
| Fax No. | N/A |  |
| E-mail Address |  |  |
| Mail Address | Institute of Geology, Rozvojová 269, Prague 6, 165 00 |

1. xxxxxxxxxxxxa for contractual and administrative matters or a person duly authorised by him ("Contract Officer"). All correspondence for contractual and administrative matters will be addressed to:

|  |  |  |
| --- | --- | --- |
|  | To: | With copy to: |
| Name |  |  |
| Telephone No. |  |  |
| Fax No. |  |  |
| E-mail Address |  |  |
| Mail Address | Institute of Geology, Rozvojová 269, Prague 6, 165 00 |

1. Personal Data Protection matters shall be addressed to the Data Protection contact point as follows:

|  |  |
| --- | --- |
|  | To: |
| Name |  |
| Telephone No. |  |
| e-mail address |  |
| Mail Address | Institute of Geology, Rozvojová 269, Prague 6, 165 00 |

CLAUSE 8: GENERAL CONDITIONS OF EXECUTION

***Clause 8.8*** *is added as follows:*

The Contractor shall at all times conduct its activities, including those of its Sub-contractors and/or suppliers (if any) under this Contract in accordance with any and all applicable laws and regulations and requirements, (including those dealing with labour, health, safety, environmental, and REACH (EC/1907/2006) matters, anti-corruption, anti-money laundering, anti-terrorism, economic sanctions, competition laws and data protection laws) of any country in which any part of the Work or activities is performed, or affecting or applicable to such Work. The Contractor shall ensure that such requirement is flowed down to his Subcontractors.

In case the Contractor fails to comply with this obligation, the Contractor shall at all times keep the Prime Contractor completely harmless from any possible legal actions, of whatever nature resulting

from the Contractor’s and/or Subcontractor’s and/or supplier’s failure to comply with the said laws, regulations and requirements.

CLAUSE 10: SUB-CONTRACTS

*Sub-Clauses 10.1 and 10.2 are implemented as follows*

* 1. The Prime Contractor and the Agency, through the Prime Contractor agree to the company task and responsibility distribution within the Contractor's industrial consortium as specified in Appendix C.
	2. The prior written consent of the Prime Contractor shall be required for any contract entered into by the Contractor with any firm(s) proposed to replace any of the tasks listed in Appendix C for any of the activities to be performed under this Contract.
	3. Furthermore, the following provisions shall apply with respect to the selection of Subcontractors (if any)within the industrial consortium:
		1. The full responsibility of the incorporation of a Subcontractor, especially the liability as to performance and schedule requirements of the Subcontracting of the work and its effects on the overall planning and performance shall be with that Contractor, into the industrial team of which a given Subcontractor is incorporated, while maintaining on all other levels of contracting responsibilities/liabilities as contractually defined.

CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)

It is not foreseen that the Prime Contractor will make any Customer Furnished Items available to the Contractor in accordance with Clause 11 of the GCC.

CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY OR THE PRIME CONTRACTOR

It is not foreseen that the Prime Contractor will make any items available to the Contractor in accordance with Clause 12 of the GCC.

CLAUSE 13: CHANGES

The template of a Contract Change Notice (CCN) is attached hereto as Article 6.

CLAUSE 14: TIME-LIMITS FOR THE PROVISION OF DELIVERABLES AND SERVICES

The time limits for the provision of deliverables in Clause 14.1 are specified in Article 2 of this Contract.

***Sub-Clause 14.2*** *shall be implemented as follows*

The Contractor shall, without delay and in any case at the latest within 2 Working Days and/or 48 hours of its coming to his notice or of the time when the Contractor should have come into notice, had the Contractor used its best diligence in the Contract's performance, notify and consult with the Prime Contractor of any occurrence likely to affect the satisfactory performance of the Contract and in particular of the agreed schedule. At the same time, the Contractor shall within 2 (two) working days analyse the impact of any such occurrence and propose corrective action to be agreed with the Prime Contractor for implementation. If within a period of 5 (five) working days, the Contractor has

not complied with the above, the Contractor shall be precluded from making any claim resulting from such occurrence.

In ***sub- clause 14.3:*** 1 Month is replaced by 20 Days.

CLAUSE 15: HANDLING, PACKING AND TRANSPORT, TRANSFER OF OWNERSHIP AND RISK, STORAGE

*Clause 15.1 - Responsibility for Handling, Packing and Transport*

*The following provisions are added to* ***Clause 15.1****:*

The Contractor shall ensure the appropriate packing to protect the equipment from the environment conditions experienced during transit (or storage). It is the Contractor's responsibility to define the appropriate requirements for transport (and storage) and have them implemented up to the place of delivery to the final destination (where applicable).

Labelling and marking with the Contract number shall be provided by the Contractor for each Deliverable Item package. The Contractor shall notify the Prime Contractor of the pending shipment 3 working days prior to the actual shipment date.

The Contractor shall comply with such shipping instructions as the Prime Contractor may give him.

The Contractor shall be responsible for the maintenance, operation, handling, storage and transport (including customs clearance, import/export licences and/or permits) of all hardware, software and documentation, and subsequent return of all items for disposal or storage in accordance with the Prime Contractor or Agency’s instructions.

If the Contractor fails to meet a delivery date agreed between the Parties, and that as a result, the storage for all deliverable items become necessary until the next available opportunity(ies), the Contractor shall be responsible at his own expenses and liable for the storage or delta storage and de-storage.

*Clause 15.3 - Import/Export licences/authorisations and related Documentation*

*The following provisions are added to 15.3:*

The Parties shall be responsible for complying with all applicable national and international laws and regulations including, but not limited to laws and regulations applicable to import, export, re-export or otherwise transferred technical data or technology (hereafter **“Export Regulations**”).

The Parties acknowledge that any non-compliance with such Export Regulations is prohibited.

The Contractor undertakes to inform the Prime Contractor and the Agency immediately about any issues related to export control authorisations/licences or classification changes which may have an adverse impact on his capacity to perform his obligation under this contract.

*Sub clause 15.3.1 is completed by:*

The declaration regarding Export Control Classification completed by the Contractor is annexed to the Contract in Appendix J.

*Sub clause 15.3.2 is completed by the following:*

In the event that any Export Regulations would prevent the Contractor from complying with the obligations under this Article and without prejudice the provisions of Clause 32.1 e) and of clause 14.3, the Contractor shall within a timeframe compatible with the schedule of relevant deliveries under this Contract submit to the Prime Contractor a proposal for the possible replacement or modification of the restricted technology, including a detailed assessment of all impacts on design, Price and the qualification status.

*Sub clause 15.3.4 is completed by the following:*

The Contractor shall provide the Prime Contractor with a copy of the export licence, including a copy of all provisions that relate to the compliance obligations of the purchaser and/or the End User.

*Sub-Clause 15.3.6 is added as follows:*

15.3.6. Should in the execution of the Contract a need arise to provide the Prime Contractor and the Agency with information which is subject to export control laws and regulations, the Contractor shall secure that such information is only passed on to the Prime Contractor and the Agency in accordance with the provisions of such export control laws and regulations.

*Clause 15.4 - Transfer of ownership and risk*

*The following provisions are added to Clause 15.4:*

1. Flight Items

Risk and Ownership in the flight Deliverable Items shall pass to the Prime Contractor upon their Acceptance as per Clause 16 below.

1. Non-Flight Items

Transfer of risk and ownership in all other Deliverable Items shall take place upon their acceptance by the Prime Contractor in accordance with the provisions of Clause 16, below.

CLAUSE 16: ACCEPTANCE AND REJECTION

*Clause 16 is complemented and amended by the following provisions with regard to the Prime Contract and under consideration of the Deliverable(s) of the Contractor:*

* 1. Acceptance of Hardware and Software

Acceptance or rejection of the items to be delivered under the Contract shall be determined on the basis of the Contractor demonstrating compliance acceptance criteria and/or with relevant requirements, as confirmed by the Prime Contractor that the items have been constructed in accordance with the appropriate specifications and have satisfactorily concluded testing in accordance with the test plans and procedures approved by the Prime Contractor.

Acceptance of flight items to be delivered under the Contract shall be determined on the basis of the Contractor demonstrating to the satisfaction of the Prime Contractor and the Agency that the items have been constructed in accordance with the appropriate specifications and have satisfactorily concluded testing in accordance with the test plans and procedures approved by the Prime Contractor and the Agency in related ADs.

Acceptance of non-flight items shall take place after successful completion of their Acceptance Review, having gone through and successfully passed the individual acceptance tests and procedure to be proposed by the Contractor and agreed by the Prime Contractor.

Acceptance of other items shall take place after successful completion of their Acceptance Review, having gone through and successfully passed the individual acceptance tests and procedure to be proposed by the Contractor and agreed by the Prime Contractor.

* 1. Approval of Deliverable Documentation

Deliverable documentation shall be submitted to the Prime Contractor for approval or review as required in Appendix C and within due dates specified in this contract. The Prime Contractor will then ascertain whether the document is in conformance with the requirements of the Contract. Documentation requiring the Prime Contractor' approval shall be reviewed in accordance with Appendix C.

In the event that the Prime Contractor considers that a submitted document does not fulfil the contractual requirements, the Contractor shall, at the justified request of the Prime Contractor, bring the document up to the appropriate standard at his own expense.

The Prime Contractor’s review, approval and acceptance of documentation to be submitted by the Contractor shall neither constitute an incremental certification of the Contractor's design nor shall it constitute release from his responsibilities before the performance of the subject of the Contract has been shown fully to comply with the specified requirements and formal acceptance has been certified by the Prime Contractor.

CLAUSE 17: PENALTIES / INCENTIVES

*Penalties, as provided for under Clause 17.1.1, shall apply as follows:*

* + 1. Penalty as provided for under Clause 17 of the General Clauses and Conditions shall apply to the delivery of the flight items and all deliverables related to flight items (e.g. hardware, software, documentation).

The penalised value shall be the total price of the Contract.

* + 1. For the purpose of Clause 17.1.1, it is agreed that penalties shall apply even though the Contractor meets the required contractual delivery date(s) and the Prime Contractor 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.
		2. No further penalty on the delivery of any other item shall be applied.
		3. The provisions of Clause 17 of the General Conditions, with the penalty scale included in Annex III, paragraph 1.1 shall be applied.
		4. Penalties shall be paid by the Contractor to the Prime Contractor once agreed between the Parties within the payment term in Article 3.4 herein, or deducted from the price of the remaining following payment milestones once agreed between the Parties.
		5. No incentives apply under the present Contract

CLAUSE 18: DAMAGE TO STAFF AND GOODS

*The following provision is added to* ***Clause 18.2****:*

The limit of liability of the Contractor under this sub-clause shall not apply in case of gross negligence and/or wilful misconduct.

Any insurance which may be taken by the Contractor to cover his liabilities hereunder shall include a provision of non-recourse against the Prime Contractor, the Agency or its agents, with the exception of gross negligence or wilful act of the Prime Contractor, the Agency or its agents. The Contractor shall indemnify the Prime Contractor and the Agency and hold the Prime Contractor and the Agency harmless against all consequences derived from his failure to include such a provision.

CLAUSE 21: SCOPE OF WARRANTY

*The following provision is added to* ***Clause 21.1****:*

The provisions set forth hereafter shall apply to all Deliverable Items, including but not limited to all documentation, services, hardware and software items, together with the designs.

The Contractor warrants that the Deliverable Items and services supplied under the Contract are in all respects in compliance with both the contractual requirements and with any statutory rule or regulation which may be in force at the time of delivery and free from any defects which would lead to not fulfilling the applicable performance requirements covered by the Contract.

Defect shall be deemed to also include:

1. defects in material and defects due to workmanship regardless of the origin of the material;
2. defects due to the design, including defects resulting from the choice of the material and/or components, if any;
3. defects in the manufacturing process.

If the Contractor is not the manufacturer, the Contractor shall obtain the same warranty as specified herein from the manufacturer, or extend at its own expenses this warranty by appropriate maintenance agreements, and the complete warranty will pass to the Prime Contractor then to the Agency. The Contractor shall assist and co-operate with the Prime Contractor and /or the Agency in making claims under such warranty. The warranties will not be affected by removal or relocation of the Deliverable Items.

CLAUSE 22: WARRANTY PERIOD

Clause 22.1 and 22.3 are implemented as follows

The warranty for non-flight items shall start at Acceptance by the Prime Contractor of the Deliverable Items (hardware and software) and shall run for a period of 12 (twelve) months.

The warranty period for all Flight-Items shall start at the respective successful Acceptance and shall run for a period of 12 (twelve) months.

Warranties shall survive inspection, acceptance and payment and shall benefit to the Prime Contractor and to the Agency and their agents, successors in interest, assigns and clients, if any.

CLAUSE 23: PROCEDURE APPLIED IN THE EVENT OF DEFECTS OR FAILURES

In clause 23.1 and 23.2: 3 Working Days is replaced by 2 Working Days, 1 Month is replaced by 25 Calendar Days.

*The following provisions are added to* ***Clause 23.1****:*

* + 1. On receipt of notification of the defect, the Contractor shall indicate whether he wishes to repair or replace all or part of the Deliverable Item. However, after receiving the Contractor's proposal, the Prime Contractor shall decide whether such supplies shall be replaced free of charge by the Contractor, whether their cost shall be reimbursed by him at replacement prices, or whether they shall be repaired or modified by him at his expense.
		2. The Prime Contractor shall determine a reasonable time limit for such repair or replacement, in the understanding that after expiration of such period, and after serving due notice to the Contractor, the Prime Contractor either itself or by ways of a replacement contract, shall be entitled to correct the defect at the Contractor's expenses and to assert any other rights accruing in relation to the failure.

CLAUSE 27: PRICING

*This Clause is replaced by Article 3.*

CLAUSE 28: PAYMENTS

*This Clause is replaced by Article 3.4.*

CLAUSE 34: APPLICABLE LAW

The substantive law referred to in Clause 34 of the GCC is the law of The United Kingdom.

CLAUSE 35: DISPUTE RESOLUTION

The arbitration proceedings referred to in Clause 35 of the GCC shall take place in London, UK. The scope of its applicability is as laid down in the said Clause of the GCC.

##### PART II: GENERAL CONDITIONS

For the purpose of this Contract:

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

The following provisions are added:

CLAUSE 36: GENERAL

The following provision is added to Sub-Clause 36.2 of the GCC:

The term “documentation” as defined in Annex IV to the GCC shall be interpreted to 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 of the GCC.

The electronic files containing these items shall be delivered to the Agency in the format agreed with the ESA Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract.

CLAUSE 37: INFORMATION TO BE PROVIDED

The following provision is added to Sub-Clause 37.2 of the GCC:

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 of the GCC:

The access rights granted to the Agency’s employees under Sub-Clause 38.2 of the GCC are hereby extended to Contractor personnel providing technical, management, legal or administrative support to ESA as long as they have signed an engagement of confidentiality.

CLAUSE 39: OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

Shall apply, it being expressly understood that the data generated by the instrument during it in- flight operations shall be owned by the Agency, who shall dispose of it as deemed fit.

CLAUSE 42: SOFTWARE

1. The Contractor shall deliver directly to the Agency the software in source code form, it being understood that the Agency shall have unrestricted rights of internal use, and the right to sub-licence the source code of the software developed in the frame of the present Contract to Third Parties, for purposes strictly limited to the successful implementation of the work defined in this Contract.

For the avoidance of doubts, no sublicensing restrictions shall apply to the software provided in object code, compiled version, or any other form of protection.

1. Sub-Clause 42.2 of the GCC is superseded by the provisions of this Clause.

CLAUSE 43: BACKGROUND INTELLECTUAL PROPERTY RIGHTS

***Clause 43.1*** *is replaced by the following provisions:*

No BIPR has been specified by the Contractor for the execution of this contract.

The Parties agree that no further Background Intellectual Property Rights will be declared other than justified by a Change introduced in accordance with Article 6 herein.

## ARTICLE 6 - CHANGES

##### General

The Prime Contractor may at any time, by written order, request changes to the Contract and the Contractor shall be obliged to implement such changes under the conditions specified below.

The Prime Contractor may also accept changes proposed by the Contractor on its own initiative or on behalf of its Subcontractors and lower level contractors.

No change to the Contractual Baseline, as defined in Article 1 above, and no change which establishes or may establish a financial or other obligation to the Prime Contractor, shall be

introduced, implemented, or approved by the Contractor, on any level of contracting, without the written consent of the Prime Contractor duly authorised Representatives.

##### Classifications of Changes

All changes, depending upon their nature, shall be classified into the categories defined below.

The baseline from which deviations are deemed to be changes shall be the Contractual Baseline as defined in Article 1 above of the status as agreed and approved by the Prime Contractor at the date of approval of the change.

Class A changes are alterations which result from one or more of the following causes:

* + 1. A change to the documents of the Contractual Baseline through an approved Contract Change Notice (CCN);
		2. The Prime Contractor’ failure to execute one of its undertakings as defined in the Contract.

Class B changes are all other changes.

Notwithstanding the above Class A and B changes definitions, the Contractor shall be ready to offer reasonable flexibility in the execution of its Work with respect to changes to Interface and Operations requirements of the Appendix C, which shall not entitle the Contractor to claim Class A changes, when such are pursued by the Prime Contractor until PDR as long as this change of interface does not significantly impact cost assumptions or require reiteration of significant design or development activities already performed before the change of interfaces requirements.

In addition, the Contractor shall provide, as part of his baseline activities under the Contract, support requested by the Prime Contractor to analyse possible changes to the interface or operations requirements.

##### Change Procedure

* + 1. Change Processing:
			- Should the Prime Contractor consider it necessary, in order to keep proper track of the Contractual Baseline, to compile approved Contract Change Notices into a Rider to the present Contract, the Contractor shall agree to do so.
		2. Change Review
			- A Change Review Board (CRB) shall be set up, upon request of either Party and/or the Agency, consisting of the Agency, the Prime Contractor and the Contractor's Representatives designated in Article 5, Clause 5. The function of the Board shall be to review and decide upon all Contract Change Notices (CCNs) submitted to it. The members of the CRB may be assisted by specialists of their own staff or the staff of their Subcontractors.
			- The Contractor shall make available to the Prime Contractor all data required by the Prime Contractor to permit a complete evaluation of the implications of any proposed change.
			- When examining CCNs, the CRB shall either reach unanimous agreement or draw up a statement of disagreement.
		3. Decision on a Change
* Approval

Approval of a CCN constitutes:

* + A decision to introduce a change;
	+ Agreement on the classifications of the change, its costs and the consequences of the change on the schedule, on the technical requirements and/or other provisions of the Contract.

Signature of the CCN by the duly authorised Representative of each Party constitutes approval of the change.

* Rejection

The Prime Contractor reserve the right to reject, after evaluation, the introduction of a change even if it has itself initiated such a change.

* Disagreement

Nothing contained in this Article or elsewhere is to be construed as justifying any decision by the Contractor not to introduce or to suspend the introduction of a change approved or ordered by the Prime Contractor.

Any disagreement regarding the influence of a change on the cost, the time schedule or any other provision of the Contract, which cannot be settled by the CRB, shall be the subject to settlement in accordance with the dispute resolution procedure identified in the provision contained in Clause 35 of Article 5 above.

Notwithstanding the aforesaid, when the Contractor has been so instructed by the Prime Contractor under Article 6.8, the Contractor shall continue to implement the change unless otherwise requested by the Prime Contractor even in case a matter was referred to CRB or Dispute Adjudication Board or Arbitration.

Nothing contained in this Article or elsewhere is to be construed as justifying any decision by the Contractor not to introduce or to suspend the introduction of a change approved or ordered by the Prime Contractor.

##### Consequences of the changes on the Contract's terms

Class A Changes

If any Class A change causes an increase or decrease in the cost of, or the time required for, the performance of the Contract, an appropriate adjustment shall be made in the price, or the schedule, or both.

Each proposed modification shall be priced and submitted in the same detail and on the same basis as the original subject matter of the Contract (e.g. hourly rates, overheads, profit margins, price type, PSS forms, modified payment plans, etc.,) unless otherwise specifically agreed.

In the event of cancellation of any Work or hardware (negative Class A), the Agency reserves the right to audit the relevant costs, in accordance with Annex I to the GCC.

Class B Changes

The Contractor shall be responsible for all Class B changes and these shall not change the conditions of the Contract. In particular the cost and schedule impacts of changes deriving from the parts procurement activity or of changes necessary to make the subjects of Sub- Contracts conform to their technical specifications shall not be borne by the Prime Contractor.

All class B changes between the Contractor and Subcontractors throughout the whole consortium shall be copied to the Prime Contractor for information and further disclosure to the Agency, with reference in particular but not limited to price changes and geographical distribution (if any).

##### Limitation of liability for changes

1. The Contractor shall reduce to the minimum any delay to the Project caused by any changes. If a delay due to a Class A change causes extra costs, the Prime Contractor shall pay such costs only insofar as the Contractor can prove that this change was the sole cause of the delay. Target dates shall be extended only if the Contractor can prove that the Class A change is the sole cause of his requesting a delay.
2. The conditions governing a change shall be those contained in the Contractor's Change Notice as approved by the Prime Contractor; any documentation related to a change supplied by a Subcontractor shall be considered as supporting information only and shall have no contractual implication whatsoever.
3. The Prime Contractor shall not bear the cost of implementing changes deriving from any Work for MILANI-Hera Cubesat 2 Project related activities which the Contractor and/or his Subcontractors may be performing under a contract with a Third Party.
4. Further, the Contractor or any of its Subcontractors or lower level contractors shall be precluded from making any claim whatsoever in connection with a change, if the Contractor, Subcontractors or lower level contractors have failed to submit a change proposal within the timeframe set up in the change request taking into account the complexity of this change request following the receipt of the Change Request, unless the Prime Contractor grants an extension, by notification in writing to the Contractor, upon Contractor giving due justification for the delay.
	* 1. All tasks and activities relating to the contractual change procedure (notably establishment of the change proposal data package and negotiation and administrative implementation of the change implementation of industrial policy directions)shall form part of the Contractor's system routine activities covered by the Contract price and cannot be charged in addition to the baseline activities, unless the Contractor can demonstrate that, in case of the Prime Contractor requested Class "A" change, the associated effort and cost are of such magnitude that they are tantamount to new procurement.
		2. Nothing contained in this Article or in Appendix C is to be construed as justifying any decision by the Contractor not to introduce or to suspend the introduction of a change approved or ordered by the Prime Contractor.

##### 6.6 Change procedure under exceptional circumstances

In exceptional circumstances, justified by programmatic constraints and urgency, the Prime Contractor reserves the right, to instruct the Contractor In Writing by the Prime Contractor’s representatives to implement a change to the requirements covered by the Contract, on the basis of a preliminary quotation submitted by the Contractor on the effects of such change on the contractual work, price, schedule, Deliverables or any other terms and conditions by signing an Authorisation to Proceed (ATP) specifying a financial limit of liability, unless covered in a financial limit of liability already released.

When a change is so authorised, the Contractor shall proceed with its implementation in accordance with the Prime Contractor’s instruction and within the limit of liability specified here above. It shall moreover submit to the Prime Contractor a committing and detailed quotation within reasonable time after receipt of the Prime Contractor’s instruction. The resulting change to the Contract shall be introduced in accordance with the present Article 6.

The Contractor shall immediately inform the Prime Contractor of any objection it has to the implementation of the Prime Contractor’s instruction.

If no agreement can be reached on the above-mentioned CCN, the Contractor shall be reimbursed under Time and Material Price type within the limit of liability referred to above. Prior to such payment, the Prime Contractor shall have the right to request detailed evidence of the cost incurred or to audit the costs incurred, in accordance with the provisions applicable to Time and Material type of price, as defined under the General Clauses and Conditions for ESA Contracts.

## ARTICLE 7 - ACCESS TO WORK IN PROGRESS AND TO DATA

* 1. The Prime Contractor and the Agency through the Prime Contractor may assess the technical performance under this Contract, and for this purpose all Work under this Contract and data and documentation generated hereunder by the Contractor and his Subcontractors, including all design and test data, are subject to continuous examination, evaluation and inspection by the Prime Contractor and the Agency during the period of this Contract. The Contractor shall, for the purpose of this Article, arrange access for the representatives of the Prime Contractor and the Agency to those premises where Work on or in connection with the subject of this Contract is being, has been or is intended to be performed. Following such technical assessment, the Parties shall discuss the findings and, without prejudice to the Prime Contractor’s other rights and remedies, the Parties shall promptly agree on a remedial action plan including all necessary steps as well as a timetable to implement the plan to fully address any concerns identified.
	2. The Prime Contractor may call for the suspension of any Work it may judge unsatisfactory as failing to comply either with the terms of the Contract or with the normal customs of the trade. The exercise of this right shall in no way and shall in no circumstances affect the Prime Contractor and Agency's rights, or lessen the Contractor's responsibilities regarding the due fulfilment of his obligations.
	3. Except in case of extreme urgency, the Prime Contractor shall inform the Contractor in good time of any intended visit to a Subcontractor and shall invite a representative or

representatives of the Contractor to be present. Nevertheless, no prior notice shall be required if such access is made by the employees, representatives, consultants or agents of the Prime Contractor and the Agency, where such employees, representatives, consultants or agents are already based at the plants of the Contractor or its Subcontractors.

* 1. The Contractor shall not permit Work under this Contract to be performed in association with or in proximity to work subject to national security or similar restrictions such that access to the area in question by the Prime Contractor and the Agency's representatives could be prevented for reasons of security restrictions.
	2. Subject to the provisions of Clause 24 of the GCC and Article 5, Clause 38 (Disclosure), and to the Contractor’s standard facilities security system requirements, the Prime Contractor and the Agency shall be allowed by the Contractor full and free access at all reasonable times with a reasonable prior written notice to any Information and documentation of the Contractor and its Subcontractors that is necessary during the lifetime of the satellite according to the provision of the present Contract. This access shall be made available to the Prime Contractor and the Agency free-of charge.

To this extent, the Contractor undertakes to, as per Statement of Work, retain the design, manufacture and test documentation related to the Deliverable Items and maintain the necessary expertise and capacity to investigate any malfunction of the Deliverable Items.

## ARTICLE 8 – ADDITIONAL PROVISIONS

##### Survival clause

* + 1. Termination or expiration of the Contract for any reason shall not release a Party from any liabilities or obligations set forth in the Contract which:
1. The Parties have expressly agreed shall survive any such termination or expiration; or
2. Remain to be performed (including any obligation to make a payment which is stated to be payable following termination) or by their nature shall survive the termination or expiration.
	* 1. The following Articles shall survive any termination or expiration of the Contract:

*Article 8.1 (Survival); Article 5, Clause 21 & 22 & 23 (Scope of Warranty and Warranty Period, Procedure applied in the event of defects or failures); Article 5 Part II (Intellectual Property Rights); Article 5 Clause 38 (Disclosure of Information); Article 5 Clause 8*

*(General Conditions of execution); Article 5 Clause 15.3; Article 5 Clauses 20 (Liability);*

*Article 5 Clause 18.3 (Insurance); Article 5 Clause 34 and 35 (Law and Dispute Resolution).*

##### Severability

If any of the provisions of this Contract shall become or are invalid and unenforceable, all other provisions hereof shall remain in full force and effect. The invalid or unenforceable provision shall be deemed to be automatically amended or replaced by a valid or enforceable provision which economically accomplish as far as possible the purpose and intent of the invalid or unenforceable provision.

* 1. In order to be compliant with the Czech Republic laws on transparency (Law 340/2015 Coll.), the Contractor shall post the Contract in the Public Register of Contracts (the Czech Republic).

## SIGNATURE

Done in two originals,

Torino

4.12.2020

In: Prague 11.12.2020 In: ..................................

## LIST OF APPENDICES

#### APPENDIX A: PAYMENT PLAN AND FINANCIAL CONDITIONS

**APPENDIX B: THE GENERAL CLAUSES AND CONDITIONS FOR ESA CONTRACTS APPENDIX C: SOW and LIST OF DELIVERABLES ITEMS**

**APPENDIX E: CONTRACT CLOSE-OUT LAYOUT (including a Statement of Invention and List of Fixed Assets)**

**APPENDIX F: INVENTORY FIXED ASSET RECORD APPENDIX G: CONTRACT CHANGE NOTICE TEMPLATE**

**APPENDIX H: THE STATEMENT OF WORK, REFERENCE ESA-TEC-SOW-017336, ISSUE 1, REVISION 0, DATED 10/03/2020**

**APPENDIX J: PMAC CERTIFICATE**

**APPENDIX A: PAYMENT PLAN, ADVANCE PAYMENT(S) AND OTHER FINANCIAL CONDITIONS**

|  |  |  |
| --- | --- | --- |
| **Milestone (MS) Description** | **Schedule Date** | **Payments from ESA to****(Prime) Contractor****(in Euro)** |
| Progress (MS 1): Upon successful PRR and acceptance of all related deliverables. | November 2020 | - |
| Progress (MS 2): Upon successful PDR and acceptance of all related deliverables. | May 2021 | 50,000 |
| PDR + 4 months (delivery of final algorithms) | September 2021 | 50,000 |
| Progress (MS 3): Upon successful CDR and acceptance of all related deliverables. | March 2022 | - |
| Progress (MS 4): Upon successful TRR and acceptance of all related deliverables. | February 2023 | - |
| Progress (MS 5): Upon successful QAR and acceptance of all related deliverables | April 2023 | - |
| Final Settlement (MS 6): 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 | September 2024 |  |
| **TOTAL CONTRACT** | **100.000** |

Advance Payment(s) and other Financial Conditions:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Company Name** | **Advance****Payment (in Euro)** | **Offset against** | **Offset by Euro** | **Condition for release of the Advance Payment** |
| Czech Institute of Geology (GLI) | 10,000 | MS 2 | 10,000 | Anticipated work in Phase A |

Advance Payment (if any) is released at signature of the present contract.

Payments are subject to prior execution of payment from ESA to Tyvak International as per ESA Contract No. 4000131925/20/NL/GLC between ESA and Tyvak International.

**APPENDIX B: THE GENERAL CLAUSES AND CONDITIONS FOR ESA CONTRACTS**

provided as separate document

## APPENDIX C: STATEMENT OF WORK AND DELIVERABLES ITEMS

provided as separate document

## APPENDIX E: LAYOUT FOR CONTRACT CLOSURE DOCUMENTATION

#### (Rev 5: 2018-10)

for

***ESA Contract No. 4000131925/20/NL/GLC “Hera Cubesat Implementation Phase”,*** hereinafter referred as the “Contract”

#### Section 1 – Parties, Contract Duration and Financial Information

|  |  |
| --- | --- |
| **Contractor** | [TYVAK INTERNATIONAL, ITALY] |
| **Subcontractor** | [NAME AND COUNTRY] |
| **Contract Duration** | **From**:**To**: | **Phase 1** from: to: |
| **Phase n** from: to: |
| **Total Contract Price**(*including all CCNs, Work Orders, Call of Orders*)and Total Contract Value(*in case of co-funding; state if not applicable*) | **EUR**EUR |
| **Broken down as follows:** | **Original Contract Price**and original Contract Value(*in case of co-funding; state if not applicable*) | **XXX EUR (XXX EUR)**EUR |
| **CCN x to n****Work Order x to n Call-Off Order x to n** | **EUR** in total**EUR** in total**EUR** in total |

**Section 2 – Recapitulation of Deliverable Items**

**2.1 Items deliverable under the Contract**

*If any of the columns do not apply to the item in question, please indicate “n/a”.*

Table 2.1.1 – Items deliverable according to the Statement of Work and Article 2 of the Contract

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Type** | **Ref. No.** | **Name****/ Title** | **Description** | **Replaceme nt Value (EUR)/****Other** | **Location (**1**)** | **Property of** | **Rights granted / Specific IPR Conditions (**2**)** |
| **Document ation** |  |  |  |  |  |  |  |
| **Hardware** |  |  |  |  |  |  |  |
| **Software** |  |  | *(Delivery in**Object code / Source code?)* |  |  |  |  |
| **Other** |  |  |  |  |  |  |  |

1 *In case the item is not delivered to TYVAK INTERNATIONAL, please indicate the location of the deliverable and the reason for non-delivery (e.g. loan agreement, waiver, future delivery, etc.)*

2 *e.g. IPR constraints, deliverable containing proprietary background information (see also 2.1.4 below)*

Table 2.1.2 – Items deliverable under Article 4 of the Contract (*if applicable*)

The Contractor, after agreement with the Agency with respect to the disposal/transfer of Inventory Items/Fixed Assets under the Contract, shall submit the Inventory/Fixed Asset Record as attachment to the CCD. For each Item/Fixed Asset, the information as requested by Appendix F to the Contract shall be provided in the Record.

Table 2.1.3 – Customer Furnished Items and Items made available by the Agency

#### [Option 1]

There was no Customer Furnished Items or Items made available by the Agency.

#### [Option 2]

Any Customer Furnished Items and/or Items made available by the Agency to the Contractor and/or its Subcontractor(s) under the Contract, are listed in the following List of Customer Furnished Items and Items Made Available by the Agency. The following tables certify which of the items have been returned to the Agency and which of the Items remain in the custody of the Contractor, and/or a Subcontractor(s) and/or a Third Party(ies) for further ESA work or for other purposes.

Customer Furnished Items

|  |  |
| --- | --- |
|  | ESA DECISION |
| Item Name | ESAInventory Number | Location | Insurance Value | Confirmation of Receipt | Deliver to ESA or to another entity | Leave at (Sub)Contractor’s Disposal under a loan agreement |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

Items made available by the Agency

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item Name | ESAInventory Number | Location | Replacement Value | Deliver to ESA or to another entity | Leave at (Sub)Contractor’s Disposal under a loan agreement |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

Table 2.1.4 – Background Information used and delivered under the Contract (see Clause 43 of the General Clauses and Conditions)

The following background information has been incorporated in the deliverable(s):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Proprietary Information**(*title, description*) | **Owner**(*Contractor /**Subcontractor(s)/ Third Party(ies*) | **Affected deliverable**(*which documents, hardware, software, etc.*) | **Description impact on ESA’s rights to the deliverable (**3**)** | **Other comments** |
|  |  |  |  |  |

#### Section 3 – Statement on Intellectual Property Rights generated under the Contract

**[OPTION 1**: NO Intellectual Property Rights generated under the Contract]

In accordance with the provisions of the above Contract [*insert Contract Number*], [*insert Company name*] hereby certifies both on its own behalf and on behalf of its consortium/Subcontractor(s), that no Intellectual Property Rights (as defined in Annex IV of the General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002, rev. 3, the “GCC”) have been generated in the course of or resulting from work undertaken for the purpose of this Contract.

#### [END OF OPTION 1]

**[OPTION 2**: Intellectual Property Rights generated under the Contract]

The Agency’s rights in the Intellectual Property Rights listed in the table below shall be in accordance with the General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002, rev. 3, the “GCC” - Part II provisions, as amended by the Contract [*insert Contract Number*].

In accordance with the provisions of the above Contract, [*insert Company name*] hereby certifies both on its own behalf and on behalf of its consortium/Subcontractor(s) that the following Intellectual Property Rights (as defined in Annex IV of the "GCC") have been generated in the course of or resulting from work undertaken for the purpose of this Contract:

3 *if not explicitly stated otherwise, the contractual stipulations shall prevail in case of conflict with the description provided in this table*

|  |  |
| --- | --- |
| **Intellectual Property Rights (“IPR”) suitable for registration (i.e. “Registered Intellectual Property Rights” as per definition in Annex IV of the “GCC”)** | **Current status***[delete non applicable options]* |
| *[insert title of IPR #1 and give a short description]* | Registered :*[insert information on registration granted*] |
| In the process of being registered:*[insert information on registration process]* |
| Foreseen for registration:*[indicate timeline]* |
| Not foreseen for registration:*[indicate reason]* |
| *[insert title of IPR #2 and give a short description]* | Registered :*[insert information on registration granted*] |
| In the process of being registered:*[insert information on registration process]* |
| Foreseen for registration:*[indicate timeline]* |
| Not foreseen for registration:*[indicate reason]* |
|  |  |
| Should any Intellectual Property Rights be indicated as being foreseen for registration or in the process of registration, the Contractor undertakes to notify the Agency's Technical Officer when:* registration of any such IPR(s) is rejected
* registration of any such IPR(s) is obtained (and will provide the registration details)
 |
|  |  |
| **Intellectual Property Rights ("IPR") not suitable for registration (i.e. not being "Registered Intellectual Property Rights" as per definition in Annex IV of the "GCC")** |  |
| *[insert title of corresponding IPR]* | *[give a short description of such IPR]* |
| *[insert title of corresponding IPR]* | *[give a short description of such IPR]* |

#### Section 4 – Output from / Achievements under the Contract

* 1. **Technology Readiness Level (TRL)**

*Indicate the TRL of the technology developed under the Contract using the classification given below (for additional information on definitions, please refer to ECSS-E-AS-11C).*

|  |  |  |
| --- | --- | --- |
| Initial TRL | Planned TRL as activity outcome | Actual TRL at end of activity |
|  |  |  |
| 1 | Basic principles observed and reported |
| 2 | Technology concept and/ or application formulated |
| 3 | Analytical and experimental critical function and/ or characteristic proof of concept |
| 4 | Component and /or breadboard validation in laboratory environment |
| 5 | Component and /or breadboard critical function verification in a relevant environment |
| 6 | Model demonstrating the critical functions of the element in a relevant environment |
| 7 | Model demonstrating the element performance for the operational environment |
| 8 | Actual system completed and accepted for flight ‘flight qualified’ |
| 9 | Actual system ‘flight proven’ through successful mission operations |

NOTE: The TRL shall be assessed by ESA. The Agency’s responsible Technical Officer shall verify TRLs 1-4 while TRLs 5-9 shall be assessed through an ESA-internal formal procedure.

#### Achievements and Technology Domain

……………………………………………………..

*Provide a concise description (max two hundred (200) words) of the achievements of the Contract and its explicit outcome (including main performances achieved): please refer to the final documentation (e.g. Final Report)*

Please indicate the Technology Domain (TD 1 to 25) of the development (*please tick off*):

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | 1 | On-Board Data Systems |  | 14 | Life & Physical Sciences |
|  | 2 | Space System Software |  | 15 | Mechanisms & Tribology |
|  | 3 | Spacecraft Electrical Power |  | 16 | Optics |
|  | 4 | Spacecraft Environment & Effects |  | 17 | Optoelectronics |
|  | 5 | Space System Control |  | 18 | Aerothermodynamics |
|  | 6 | RF Payload and Systems |  | 19 | Propulsion |
|  | 7 | Electromagnetic Technologies and Techniques |  | 20 | Structures & Pyrotechnics |
|  | 8 | System Design & Verification |  | 21 | Thermal |
|  | 9 | Mission Operations and Ground Data Systems |  | 22 | Environmental Control Life Support |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | 10 | Flight Dynamics and GNSS |  | 23 | EEE Components and Quality |
|  | 11 | Space Debris |  | 24 | Materials and Processes |
|  | 12 | Ground Station System & Networking |  | 25 | Quality, Dependability and Safety |
|  | 13 | Automation, Telepresence & Robotics |  |

#### Application of the Output/ Achievements

*Please tick off as appropriate:*

Possible use in programme:

………………………………………………………..

*Please indicate the service domain (see table) relevant to a possible application*

|  |  |  |
| --- | --- | --- |
|  | 1 | Earth Observation |
|  | 2 | Science |
|  | 3 | Human Spaceflight and Exploration |
|  | 4 | Space Transportation |
|  | 5 | Telecommunications |
|  | 6 | Navigation |
|  | 7 | Generic Technologies and Techniques |
|  | 8 | Security |
|  | 9 | Robotic Exploration |

Actual use in programme:

………………………………………………………..

*Please describe the specific programme and application or mission for which the output of this Contract is or will be used.*

#### Further Steps/Expected Duration

*Please tick off as appropriate:*

No further development envisaged. Further development needed:

……………………………………………………….

*Please describe further development activities needed, if any, to reach TRL 5/6 including an estimate of the expected duration and cost.*

#### Potential Non-Space Applications

………………………………………………………

*Describe any potential non-space applications or products that may benefit from the technology that has been developed. Emphasize potential markets and customers where known.*

………………………………………………………..

*Describe the principle features of technology that would be required in a technology demonstrator for any identified non-space application. Include an estimate of the resources in time and money that would be required.*

|  |
| --- |
| The above statements provided in the various sections of this Annex “Layout for Contract Closure Documentation” for ESA Contract No. **4000131925/20/NL/GLC** have been made after due verifications.The Contractor furthermore certifies that all its obligations with regard to Fixed Assets, if any, have been fulfilled.If required by ESA, an updated version shall be provided for incorporating amendments requested by ESA. |
| Name of Contractor:*[insert Contractor name]* |
| Authorised signatory:*[insert Authorised signatory full name]* | *[signature of the Authorised signatory*] |
| Date: [insert date] |

## APPENDIX F: INVENTORY/FIXED ASSET RECORD

#### 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

o revision of this value as a result of change(s) to the asset

* + - Impairment report of each ESA Fixed Asset remaining in the custody of the Contractor after its acceptance by ESA (using the template that will be provided by the Agency upon announcement by the Contractor that the item has been impaired)
		- date of acceptance by ESA (planned date of acceptance)
		- foreseen handling after ESA acceptance (e.g. transfer to ESA, continuing in custody of the Contractor)

#### 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 |  |  |

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

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

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

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

## APPENDIX G: CONTRACT CHANGE NOTICE TEMPLATE

For submission of a change as per Clause 13 of the General Conditions, 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 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 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:***Tyvak International Srl*** |
| Contract No.:***4000xxxxxx/20/NL/GLC*** |
| CONTRACT CHANGE NOTICE No. | ISSUE: | DATE: | PAGE: |
| DOC. No.: |
| TITLE OF AREA AFFECTED (WORK PACKAGE ETC): | WP REF: |
| RECOMMENDED CLASS (A or B): | INITIATOR OF CHANGE: |
| DESCRIPTION OF CHANGE |
| REASON FOR CHANGE |
| PRICE BREAKDOWN (Currency)/PRICE-LEVEL |
| EFFECT ON OTHER CONTRACT PROVISIONS | START OF WORK |
| END OF WORK |
| CONTRACTOR’S PROJECT MANAGER: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 H : THE STATEMENT OF WORK, REFERENCE ESA-TEC-SOW-017336, ISSUE1, REVISION 0, DATED 10/03/2020

Provided as separate document

## APPENDIX J : PAYMENT MILESTONE ACHIEVEMENT CERTIFICATE (PMAC)

|  |  |  |
| --- | --- | --- |
| COMPANY NAME | **Programme Name** |  |
| **PAYMENT MILESTONE ACHIEVEMENT CERTIFICATE (MAC)** | **REFERENCE :** | XXX |
| **DATE :** | XXX |
| **ISSUE :** | XX |  |
| **Main Contract** ref. : CONTRACT REF WITH ESAMAC Submitted by : CONTRACTOR/SUBCONTRACTOR as  Contractor /  Subcontractor Subcontract Ref. : If the PMAC is submitted by a Subcontractor otherwise put N/A |

#### Definition of Milestone achievement:

INSERT THE REFERENCES AND AMOUNT OF THE MILESTONE AS DEFINED IN

THE CONTRACT (MS# number, PO Number; MS amount MS Description/Designation, name of the associated MPP)

#### Certification:

I hereby certify to have performed a positive check that the accomplishment of this milestone conforms to the above definition.

Deficiencies, if any, from the said requirements have been listed and have either been corrected or a waiver of such requirement obtained.

#### Attached documents to evidence the above certification:

INSERT THE REFERENCE OF EACH DOCUMENT JOINED TO THE PMAC FOR EVIDENCING THE ACHIEVEMENT OF THE RELATED MS.

#### CONTRACTOR SIGNATURE :

**(If applicable)**

Name : Title : Date : Signature :

#### Prime CONTRACTOR SIGNATURE :

Name : Title : Date : Signature :