

ESA Contract No. 4000139126/22/ES/CM

with

**Institute of Atmospheric Physics (IAP) of the Czech
Academy of Science (CAS)**

**GEOSPACE REGION AND MAGNETOSPHERIC
BOUNDARY IDENTIFICATION
USING THE CLUSTER SCIENCE ARCHIVE**

CONTRACT

Between:

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

having its seat at: 24 rue du Général Bertrand, CS 30798, 75345 Paris CEDEX 7, France,
represented by its Director General, Mr Josef Aschbacher,

acting through its establishment:

European Space Astronomy Centre (ESAC),
located at: Camino bajo del Castillo, s/n Urbanizacion Villafranca del Castillo,
Villanueva de la Cañada,
E-28692 Madrid,
Spain,

of the one part,

and:

**The INSTITUTE OF ATMOSPHERIC PHYSICS (IAP) OF THE CZECH ACADEMY OF
SCIENCE (CAS)**

(hereinafter called the “Contractor” or “IAP CAS”),

whose registered office is at:

Bocni II 1401,
141 00, Prague 4,
Czech Republic

represented by its Director, Mr Radan Huth,

of the other part,

the following has been agreed between the Agency and the Contractor, hereinafter also referred to individually as “Party” and collectively as the “Parties”:

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Annex:	Personal Data Controller to Controller Annex (“PDCC Annex”)
Appendix 1:	Statement of Work
Appendix 2:	Inventory/Fixed Asset Record
Appendix 3:	Contract Change Notice
Appendix 4:	The Instructions regarding the common protection of Unclassified Programme/Project Information (in its latest version)

DEFINITIONS

- “Advance Payment”** means a payment foreseen in the Contract intended to provide the Contractor with liquidity to allow the initiation of the contractual works.
- “Agency’s Own Requirements”** means the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1(a) and (b) of the European Space Agency Convention.
- “Contract”** means an agreement established in writing the subject of which is any activity carried out to- or for the Agency in exchange of a price or another consideration, including any amendment to such agreement via a Contract Change Notice (“CCN”).
- “Day”** means calendar day.
- “Force Majeure”** means an event which is, unforeseeable, unavoidable and external at the time of Contract signature, occurs beyond the control of the affected Party and renders the performance of the Contract impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.
- “Intellectual Property Rights”** means all Registered Intellectual Property Rights, and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world.
- “Legitimate Commercial Interests”** means an interest the Contractor can demonstrate which is important to its ability to commercially exploit Intellectual Property Rights arising from work performed under the Contract for a defined period of time which includes but is not limited to an economic position vis-à-vis a competitor, loss of profits or survival of an undertaking.

“Member State”	means a State which is Party to the Convention of the European Space Agency in accordance with Articles XX and XXII of the said Convention.
“Participating States”	means a Member or non-Member State participating in a given Agency programme according to Article V.1 (a) and (b) of the European Space Agency Convention.
“Participating State’s Own Public Requirements”	means a public programme in the field of space research and technology and their space applications fully funded or funded to a substantial extent by the Participating State.
“Persons and Bodies”	means any individual, partnership, company, research organisation or legal entity under the jurisdiction of a Participating State which, when relevant, meets the criteria set out in Article II (3) of Annex V to the European Space Agency Convention.
“Progress Payment”	means a payment that is made against: (a) successful achievement, certified in writing by the Agency’s representatives, of a milestone defined in the milestone payment plan of a fixed price contract; (b) cost reports approved by the Agency in a cost reimbursement contract for a period agreed in the Contract.
“Registered Intellectual Property Rights”	means all rights granted by law through registration with an authority or office (whether actually registered or in the form of applications) including all registered patents, utility models, designs, topography rights, domain names and trademarks or equivalent rights and rights of action anywhere in the world.
“Subcontractor”	means the economic operator who is under contract to a Contractor of the Agency to provide supplies or services in support of a Contract placed by the Agency.
“Third Party”	means a natural or legal person not having signed the Contract.

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

- 1.1 The Contractor, as further described in the Statement of Work in Appendix 1 hereto, undertakes to perform “Geospace Region and Magnetospheric Boundary Identification using the Cluster Science Archive” (all hereafter referred to as the “Work”) and to deliver all the items listed in Article 2 of this Contract.
- 1.2 The Work shall be performed in accordance with the provisions stated in the following documents, listed in order of precedence in case of conflict:
- a) The specific Articles of this Contract with its PDCC Annex;
 - b) Appendix 1 hereto: the Agency’s Statement of Work, reference ESA-SCI-SC-SOW-004, issue 1, revision 0, dated 19/10/2021;
 - c) Appendix 4: The Instructions regarding the common protection of Unclassified Programme/Project Information (in its latest version);
 - d) The Contractor’s Proposal, reference No. IAP-0002-ESA, dated 28/06/2022 and 18/08/2022, not attached hereto but known to both Parties.
- 1.3 General Terms of Execution
- 1.3.1 The Contractor’s own sales conditions shall not apply.
- 1.3.2 The language of this Contract and of all communications hereunder shall be English. The substantive law according to which this Contract shall be construed is Czech National Law.
- 1.3.3 The Parties shall use their best endeavours to amicably settle any dispute arising out of the Contract. Failing an attempt towards an amicable settlement, all disputes shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one (1) or three (3) arbitrators designated in conformity with such Rules. The Arbitration Tribunal shall sit in Prague, Czech Republic. The Tribunal’s award shall be final, binding on the Parties and no appeal shall lie against it. The enforcement of the award shall be governed by the rules of procedure in force in the state/country in which the award is to be executed.
- 1.3.4 The Contractor shall be fully responsible towards the Agency for the proper execution of the Work including any subcontract agreed hereunder. Subcontracts other than those specified in Article 3.1 below are expressly excluded.

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

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

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

Should any Subcontractor encounter serious difficulties in the process leading to:

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

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

In case any Subcontractor has SME status, as per the definition of SMEs given by the European Commission:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>,

the Contractor shall ensure that the relevant subcontract foresees an automatic grant of a 35% Advance Payment.

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

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

- 1.3.6 The Contractor shall, in accordance with the Agency's Policy on the Prevention, Detection and Investigation of Fraud, to the extent allowed by applicable national law, cooperate with the Agency's investigation team in any investigation of fraud initiated by the Agency and inform its personnel of their obligation to cooperate accordingly. The Contractor shall ensure that this provision is duly reflected in all subcontracts entered into for the purpose of this Contract.

ARTICLE 2 - DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY

2.1 General

- 2.1.1 Delivery shall be considered as effected only when the relevant deliverable items are in the Agency's possession.
- 2.1.2 Should it seem likely that the originally specified delivery date(s) may be exceeded, the Contractor shall immediately notify the Agency in writing and provide a detailed justification for the delay.
- 2.1.3 No price adjustment in favour of the Contractor will be applicable for the period of delay in delivery.

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

Should the Agency conclude that the delays in delivery have impaired the intended objectives of the Work, the provisions of Article 5.5 below shall apply.

- 2.1.4 The Contractor shall be responsible for the appropriate marking, packing, package labelling, insurance, freight, carriage and delivery relative to all deliverable items due hereunder and shall bear any cost relative to all of the above. Deliverable items shall furthermore be packed to guard against loss, damage or deterioration during transport and delivery. If found damaged or defective upon delivery, the Agency reserves the right to return the affected items at the Contractor's expenses.

Should in the execution of this Contract a need arise to provide the Agency with information which is subject to export control laws and regulations, the Contractor shall be responsible to ensure in all cases that such information is passed on to the Agency in strict compliance with the provisions of such export control laws and regulations.

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

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

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

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

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

In case of termination due to Force Majeure, the amount to be paid shall be calculated as per Articles 5.6.2 and 5.6.4. No other payments, compensation or indemnities shall be due by the Agency to the Contractor.

2.2 Acceptance and Rejection

The acceptance by the Agency of the deliverables shall be declared upon verification, by the Agency, that the Work has been performed in compliance with the Agency's requirements and that the required results have been achieved. The said deliverables shall be considered as accepted in the absence of an explicit reaction in respect to the same, by the Agency, within one (1) calendar month counting from the time of submission for acceptance. The provisions of Article 5.5 below shall apply in this respect.

2.3 Deliverable Documents

The Contractor shall, during the performance of this Contract, deliver all documentation and reports specified in Appendix 1, in the format and quantities specified therein.

These shall be sent to the Agency's Technical Officer mentioned in Article 5.1, unless otherwise specified, in accordance with the following specific provisions:

2.3.1 The draft versions of the final documents [D1-D11 and Final Report] as defined in section 3.5 of Appendix 1 shall be submitted for approval, in electronic format, to the Agency's Technical Officer specified herein, not later than two weeks before the documentation is to be presented.

The finalised versions thereof shall be issued not later than four (4) weeks after the approval of the draft versions, as specified in Appendix 1.

2.3.2 The signed electronic copy of the Contract Closure Documentation (Appendix 1, Annex A) shall be delivered to the Agency's Authorised Representatives not later than the time of submitting the invoice for the Final Settlement (Article 4.1.3 here below).

2.4 Other Deliverables

The software and data resulting from the Work hereunder and as defined in section 3.5 of Appendix 1 shall be delivered to the Agency's Technical Officer specified herein, not later than the dates specified therein. The said deliverables shall be delivered in the format specified by the Agency in Appendix 1. Unless otherwise specified in Appendix 1, software shall be delivered in source as well as object code format.

2.4.1 Software

The Contractor shall deliver the source and object code relevant to the software, and the data files specified in section 3.5 of Appendix 1 to the Agency's Technical Officer specified herein in the format(s) required by Appendix 1, not later than the dates specified therein.

ARTICLE 3 - PRICE

3.1 The total price of this Contract amounts to:

99,742 EUR
(Ninety-Nine Thousand Seven Hundred Forty-Two Euro),

broken down per Contractor and Subcontractor as follows:

Company Name	ESA Entity Code	Type P/Prime; SI/Subco Indirect	Country (ISO Code)	Total Amount in Euro
IAP CAS, Research Organisation (IAP)	1000002304	P	CZ	79,742
Royal Belgian Institute for Space Aeronomy, BIRA-IASB. Belgian Federal Research Institution (BIRA)	1000004386	SI	BE	20,000

The Agency may decide that certain items produced or purchased under the Contract during its implementation (see Article 7 below) shall become ESA Fixed Assets. Such items shall be identified as becoming ESA Fixed Assets by means of a Contract Change Notice.

The abovementioned price is hereby defined as a Firm Fixed Price and, as such, it shall not be subject to any adjustment or revision by reason of the actual costs incurred by the Contractor in the performance of this Contract.

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

The price is stated as being “Delivered Duty Paid” (“DDP”) for all deliverables, exclusive of import duties and VAT in accordance with the Incoterms® 2020, to the addressees mentioned, or referred to, in Article 5 of this Contract. Reference to the Incoterms® in this provision is exclusively for the purpose of price definition. The price furthermore includes all costs relative to the Contractor’s obligations under Article 2.1.4 above.

ARTICLE 4 - PAYMENTS AND INVOICING

4.1 Payments

Payments shall be made within thirty (30) Days of receipt at ESA-ESAC Finance Payment Office of the required documents and fulfilment of the requirements specified in Articles 4.1.1 – 4.1.3 below¹. Only upon fulfilment of these requirements shall the Agency regard the invoice as due.

Requirements to be fulfilled:

4.1.1 Advance Payment:

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

4.1.2 Progress Payment(s)²:

- Milestone Achievement Confirmation (“MAC”) (hereinafter referred to as “confirmation”) with supporting documentation, as necessary, submitted by the Contractor and attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Article 4.2 here below; and
- Invoice.

4.1.3 Final Settlement:

- Confirmation submitted by the Contractor with supporting documentation as necessary attached in esa-p. The supporting documentation shall justify the

¹ This is reflected in esa-p as “30 days upon receipt by ESA, in esa-p, of both the confirmation and the invoice”, see in esa-p GUIDE Frequently Asked Questions & Answers for Suppliers at: http://esa-p-help.sso.esa.int/FAQ_for_Suppliers.pdf.

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

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

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

actual achievement of the milestone(s) as defined in the Payment Plan specified in Article 4.2 here below; and

- Invoice; and
- Delivery, and acceptance by the Agency, of all due items and fulfilment of all other obligations in accordance with the terms of this Contract; and
- Signed Contract Closure Documentation using the template provided in Appendix 1, Annex A.

Payments shall be made according to the provisions hereunder:

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

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

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

4.1.6 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, as an exception, effect a payment against an approved confirmation of the partially achieved milestone, not exceeding the value of the Work performed at the date of payment.

4.1.7 When releasing the payment for a given milestone, if applicable, the Agency's payment shall be made after due deduction of the corresponding off-set of the Advance Payment(s) as per the conditions of Article 4.2 here below.

In case of partial payment(s), the Agency shall deduct from the corresponding invoice(s) relative to the same milestone any outstanding amount of the Advance Payment(s) still to be off-set.

- 4.1.8 All invoices shall be submitted to the Agency in electronic form through the esa-p on-line system.
- a) The Contractor shall ensure that the APR (if any), all confirmations and all invoices are submitted for payment exclusively through the Agency's esa-p system. If the Contractor has no access to the Agency's esa-p system at the time of signature of this Contract, an immediate request for an esa-p user account shall be made by the Contractor to the ESA Helpdesk (mail to: [REDACTED], specifying a contact name, the company name and the ESA Contract Number.
 - b) In cases where the Agency's esa-p system is inoperative at the moment of submission of the confirmation, the Contractor may submit the confirmation by email to the Agency's Technical Officer mentioned in Article 5.1.1 a) of this Contract. A template confirmation form can be obtained upon request to [REDACTED]
 - c) The Contractor undertakes to complete confirmations and invoices, and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in esa-p.

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

In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to the number indicated on the VAT Exemption Form which the Agency provided to the Contractor when forwarding the present Contract for signature. On invoices submitted via esa-p, the number shall be put in the respective field "VAT Exemption Number".

- 4.1.9 Payments shall be made by the Agency in EURO to the account specified by the Contractor. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). The Parties agree that payments shall be considered as effected by the Agency on time if the Agency's orders of payment reach the Agency's bank within the payment period stipulated in Article 4.1 above.
- 4.1.10 Any special charges related to the execution of payments shall be borne by the Contractor.

4.1.11 Any questions concerning the operation of esa-p shall be addressed to the ESA Helpdesk (mail to: [REDACTED]).

4.1.12 Any questions concerning the latest status of due invoices can be addressed to the ESA Payment Officer (mail to: [REDACTED]).

4.2 The following Payment Plan is agreed for this Contract:

Milestone (MS) Description	Schedule Date	Payments from ESA to (Prime) Contractor (in Euro)	Country (ISO code)
Progress (MS 1): Upon successful completion of WP1, WP2 and WP3 and successful review and acceptance of all related deliverable items.	31/05/2023	20,000	CZ
Final Settlement (MS 2): Upon the Agency's acceptance of all deliverable items due under the Contract and the Contractor's fulfilment of all other contractual obligations including submission of the signed Contract Closure Documentation.	30/04/2024	79,742	
TOTAL		99,742	

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

Milestone	IAP	CZ	BIRA	BE
MS 1	15,000		5,000	
MS 2	64,742		15,000	
TOTAL	79,742		20,000	

ARTICLE 5 - SPECIFIC PROVISIONS

5.1 Approval / Representatives of the Parties during Contract Execution

For the purpose of this Contract, the authorised representative of the Agency's Director General is [REDACTED] (Head of the Science and Operations Department).

The Agency's representatives are:

- Technical Officer: [REDACTED] for technical matters, or a person duly authorised;
- Contracts Officer: [REDACTED] for contractual or administrative matters, or a person duly authorised.

5.1.1 All correspondence for the Agency shall be addressed as follows:

European Space Astronomy Centre (ESAC),
Camino bajo del Castillo, s/n Urbanización Villafranca del Castillo,
Villanueva de la Cañada,
E-28692 Madrid,
Spain,

a) for technical matters as follows:

	To:	With copy to:
Name	[REDACTED]	[REDACTED]
Telephone No.	[REDACTED]	[REDACTED]
Email Address	[REDACTED]	[REDACTED]

- b) for contractual and administrative matters (with the exception of invoices as mentioned in Article 4.1 above) as follows:

	To:	With copy to:
Name	[REDACTED]	[REDACTED]
Telephone No.	[REDACTED]	[REDACTED]
Email Address	[REDACTED]	[REDACTED]

- c) Personal Data Protection matters shall be addressed to the ESA Data Protection Officer at the following email address:

[REDACTED]

5.1.2 Contractor's Representatives:

The Contractor's representatives are:

- Technical Officer: [REDACTED] for technical matters, or a person duly authorised;
- Contracts Officer: [REDACTED] for contractual or administrative matters, or a person duly authorised.

All correspondence for the Contractor shall be addressed as follows:

Institute of Atmospheric Physics (IAP) of the Czech Academy of Science,
Bocni II 1401,
141 00, Prague 4,
Czech Republic

a) for technical matters as follows:

	To:	With copy to:
Name	[REDACTED]	[REDACTED]
Telephone No.	[REDACTED]	[REDACTED]
Email Address	[REDACTED]	[REDACTED]

b) for contractual and administrative matters as follows:

	To:	With copy to:
Name	[REDACTED]	[REDACTED]
Telephone No.	[REDACTED]	[REDACTED]
Email Address	[REDACTED]	[REDACTED]

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

	To:
Name	[REDACTED]
Telephone No.	[REDACTED]
Email Address	[REDACTED]
Mail Address	Institute of Atmospheric Physics CAS Bocni II 1401 141 00, Prague 4 Czech Republic

5.1.3 Communications related to the Contract affecting its terms and conditions shall only bind the Parties, if signed by the Agency's and the Contractor's duly Authorised Representatives.

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

5.2 Infringement of the Law – Infringement of Third Party Rights

5.2.1 The Agency shall not be responsible if the Contractor infringes the laws or statutes of its country or of any other country whatsoever.

5.2.2 In the event of a reasonable suspicion of infringement of any patent rights and other Intellectual Property Rights of a Third Party, the Work being performed under this Contract shall be stopped immediately. Assessment of the suspicion shall be performed by the Contractor and, if confirmed, both Parties shall agree on a new approach to achieve the objectives of this Contract, either by obtaining the applicable licence(s) from the Third Party by the Contractor and/or by signing a Contract Change Notice (CCN) agreed upon between both Parties, in order to avoid the infringement. The purpose of the CCN shall be either to (i) restart the Work, if plausible, due under the changed circumstances; or (ii) terminate the Contract, in accordance with Article 5.5.3 hereunder, if the infringement cannot be avoided.

Notwithstanding the above, the Contractor shall indemnify the Agency from and against all claims, proceedings, damages, costs and expenses arising from infringement or alleged infringement of any patent rights and other Intellectual Property Rights of a Third Party with respect to the Work under this Contract. This obligation does not extend to infringements resulting from the use of documents, patterns, drawings or items supplied by the Agency or from a modification or combination of the deliverables due hereunder made by the Agency after their acceptance.

5.3 Liabilities

5.3.1 Claims between the Parties in respect of damages to staff and goods occurring during the execution of the Contract shall be settled in the following manner:

5.3.1.1 Claims for injuries, including death, sustained by the Parties' representatives or employees (staff) by virtue of their involvement in the Contract shall be settled in accordance with the Law governing the Contract.

5.3.1.2 Claims for damage caused by one of the Parties to goods owned by the other Party shall be settled in accordance with the Law governing the Contract. Except in case of gross negligence or wilful misconduct, the total aggregate liability of either Party for damage to goods owned by the other Party shall not exceed the amount which is quoted in the Contract as the total Contract price.

5.3.2 Except in case of gross negligence and wilful misconduct, the Parties shall not be liable towards each other for consequential damages sustained by the Parties, arising from and during the execution of the Contract. For the sake of clarity and as an example, consequential damages include, but are not limited to: loss of contract, income or revenue; loss of profit or interests; loss of financing; loss of customer; loss of availability and use of facilities; loss of availability and use of employees' productivity or loss of services of such persons; loss of opportunity; loss of rental expenses.

5.4 Items Made Available by the Agency

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

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

5.5.1.1 Should any of the results of the Work fail to meet the agreed requirements and/or specifications, the Agency reserves the right to reject such results and require their resubmission following an iteration of the relevant Work by the Contractor at no additional charge.

5.5.1.2 Should any of the results of the Work fail to meet any of the agreed requirements and/or specifications to such an extent as to seriously jeopardise the performance of this Contract and/or to defeat its objectives, the Agency reserves the right to terminate this Contract by giving written notice by registered mail.

- 5.5.2 Should the Contractor fail to obtain an export authorisation from the competent national authority, the Agency shall have the right to terminate this Contract without further notice.
- 5.5.3 Termination of this Contract as specified above shall entail no compensation being due to the Contractor other than the amounts corresponding to the milestone payments already made hereunder at the time of serving the termination notice. Any amounts corresponding to Advance Payments not entirely offset hereunder shall remain payable to the Agency.
- 5.6 Termination without fault of the Contractor
- 5.6.1 The Agency shall have the right at any time to terminate this Contract either wholly or in part by giving written notice by registered mail. In the case of termination of a Contract by the Agency without fault of the Contractor, the Contractor shall, on receipt of the Agency's instructions, forthwith take the necessary steps to implement them. The Parties shall use their best efforts to mitigate the consequences of the termination. The period to be allowed to implement them shall be agreed between the Parties but shall not exceed three (3) months.
- 5.6.2 Subject to the Contractor conforming with the instructions referred in Article 5.6.1, the Agency shall take over from the Contractor at a fair and reasonable price all finished parts not yet delivered to the Agency, all unused and undamaged material, bought-out components and items in the course of manufacture in the possession of the Contractor and properly obtained by or supplied to the Contractor for the performance of the Contract, except such materials, bought-out components and items in the course of manufacture as the Contractor shall, with the agreement of the Agency, elect to retain.
- 5.6.3 a) The Agency shall indemnify the Contractor against such part of any loss of profit as is attributable to the termination of the Contract and against any damage resulting from the termination of the Contract, in particular against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor and are related to the Contract, in so far as the said commitments, liabilities or expenditure would otherwise, subject to the conditions stated in Article 5.6.1, represent a loss by the Contractor by reason of the termination of the Contract.
- b) The amount of compensation payable under Article 5.6.3 a) shall be fixed on the basis of evidence produced by the Contractor and accepted by the Agency. It shall take account of the proportion of the Contract completed and shall be consistent with the provisions of Article 5.6.4.

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

5.7 Changes to this Contract

5.8.1 The Agency reserves the right at any time to request a change to the requirements covered by this Contract. The Agency may also accept changes proposed by the Contractor. The requesting Party shall communicate all change requests to the other Party in writing through the Parties' Representatives indicated in Article 5.1 above.

5.8.2 The cost impact relative to any change resulting from a request, by the Agency, to modify the requirements covered by this Contract shall be borne by the Agency. The Contractor shall be responsible for the consequences and shall bear the cost of any other change.

5.8.3 When responding to a change request issued by the Agency or as a means to propose changes to the Agency, the Contractor shall submit a committing change proposal including a detailed quotation of the effects of the change on the contractual Work, price, schedule, deliverable items and any other contractual terms and conditions.

5.8.4 Upon evaluation and acceptance by the Agency of a change proposal, any amendment to this Contract shall be introduced in the form of a Contract Change Notice (CCN) according to the CCN form attached in Appendix 3. In case of rejection, the Agency shall inform the Contractor accordingly, together with the reasons for the rejection.

ARTICLE 6 - INTELLECTUAL PROPERTY RIGHTS

6.1 Information to be provided by the Contractor – Protection of information

6.1.1 Information, data, reports and results arising from Work performed under this Contract shall be delivered to the Agency. The Agency shall have the right to make such information, data, reports and results available to the Participating States and any Persons and Bodies under their jurisdiction, to use on the terms set forth in the following clauses.

6.1.2 For the purpose of this Contract, “Proprietary Sensitive Information” shall mean information corresponding to business related information (e.g. business plans) and/or Intellectual Property Rights vesting in an entity, the uncontrolled dissemination of which is likely to impair the entity’s long-term ability to use and exploit the aforesaid and/or to maintain a competitive advantage.

The Contractor shall not mark any (electronic) documentation as Proprietary Sensitive Information, unless agreed in advance with the Agency in writing. Any request from the Contractor shall be submitted in writing and accompanied by an appropriate justification.

6.1.3 Neither Party shall disclose any documentation obtained from the other Party, and which both Parties recognise as being Proprietary Sensitive Information without the other Party’s previous written authorisation. Without prejudice to the foregoing and limited to the purpose and scope of this Contract, both Parties may circulate such documentation to their employees or collaborators that require the said documentation for the sole purpose of complying with, or inspecting the progress of, this Contract.

6.1.4 The obligations provided in Articles 6.1.2 and 6.1.3 shall not apply to (electronic) documentation which:

- at the time of circulation has already entered in public domain or which after circulation enter in public domain other than through a breach of the Contract;
- at the time of circulation is already known by the receiving Party and is not hindered by any obligation not to circulate;
- is later acquired by the receiving Party from another source and is not hindered by any obligation not to circulate; or
- is required to be circulated by law or order of a court of competent jurisdiction.

6.2 Ownership and Use of Intellectual Property Rights

6.2.1 Ownership of Intellectual Property Rights

The Contractor shall own all Intellectual Property Rights and have the right to apply for, and to own, any Registered Intellectual Property Rights arising from Work performed under this Contract. The Contractor shall as soon as possible report to the Agency any results arising from such a Work which may in its opinion be protected as Registered Intellectual Property Rights and state whether it intends to apply for such protection. At the Contractor's specific request in order to allow for filing of patent applications, the Agency shall not disclose any relevant information and results for a period of twelve (12) months from the date it was reported to the Agency.

The Contractor shall subsequently inform the Agency of any application to register such results arising from Work performed under this Contract and, within two (2) months of the date of filing, provide the Agency with all details on that application. The Agency shall have an irrevocable right to use the information used in that application, for its own requirements on the terms set out in Article 6.2.2 below but, unless agreed otherwise with the Contractor, the Agency shall not disclose such information until publication of the registration application.

6.2.2 Use of Intellectual Property Rights

All Intellectual Property Rights arising from Work performed under the Contract shall be available to:

- a) the Agency, Participating States and Persons and Bodies, to use on a free of charge, worldwide licence, with the right to disseminate and/or to grant sub-licences, for the Agency's Own Requirements.

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

In view of the objectives of this activity, the Agency explicitly reserves the right to widely disseminate any output of the activity, partial or otherwise, both during the execution of this Contract or after its end, without any restriction.

- b) Participating States as well as any Persons and Bodies under their jurisdiction, to use on "favourable conditions" (i.e. more favourable for the purchaser than market conditions but still allowing reasonable profit for the seller) for the Participating States' Own Public Requirements.
- c) Academic and research institutions within the Participating States to use on a free licence without the right to grant sub-licences, for their own scientific research purposes, excluding commercial purposes and providing the Contractor agrees such use is not contrary to its Legitimate Commercial Interests.

6.3 Background Intellectual Property

6.3.1 Background Intellectual Property - Definition

For the purpose of this Contract, “Background Intellectual Property” means all Intellectual Property, belonging to the Contractor or to a Third Party, which:

- a) has not been generated under contract with the Agency either prior to or during execution of this Contract, and
- b) is relevant to the Work carried out under this Contract, and
- c) the Contractor uses to achieve the objectives of this Contract, and
- d) is delivered to the Agency to enable it to use, operate, copy, distribute and sublicense the deliverable items due under this Contract as specified in the Agency’s requirements, and
- e) is duly identified as such in this Contract.

Conversely, “Foreground Intellectual Property” means all Intellectual Property generated through Work carried out under, or directly or indirectly funded through, this Contract.

6.3.2 Use of Background Intellectual Property

In view of the above definition and of the objectives of the activity covered by this Contract, it is explicitly agreed that the Contractor will not use Background Intellectual Property to achieve such objectives.

Nevertheless, should the Contractor unilaterally decide to use existing Intellectual Property to achieve the objectives of this Contract, all results of this Contract (or any part thereof) shall be deemed and treated as Foreground Intellectual Property not containing any Background Intellectual Property. The Contractor shall grant to the Agency, and/or ensure that the Agency be granted, all the necessary rights in this respect.

ARTICLE 7 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE CONTRACT

The following provisions apply to any items other than those items which fall within the scope of Article 2 of the Contract.

The Contractor shall specify, record, manage and control any and all customer items and ESA Fixed Assets under construction (reference is made to Article 3.1 above) that are subject to this Contract. Such items are:

- i. items produced or purchased under the Contract, including electronic components, special jigs, tools, test equipment, which are paid for under the Contract with an individual or batch value (value of group of items) in the national currency equivalent to or above five-thousand (5,000) Euro;
- ii. if any, items identified as becoming ESA Fixed Assets in Article 3 above or in a subsequent CCN;
- iii. Items Made Available by the Agency, if any (see Article 5.4 of the Contract).

The Contractor shall operate an inventory control system (“Inventory Control System”) of all the above-mentioned items and shall mark them as falling under this Article of the Contract.

The Inventory Control System shall:

- record the existence, location, operational status and condition of all inventory items, and
- record the value and estimated life duration of all inventory items, and
- record changes in inventory value, and
- enable financial reconciliation to be made and status reports to be prepared for incorporation of the relevant data into the Agency’s annual financial accounts.

The Contractor shall, as part of the Inventory Control System, maintain an Inventory/Fixed Asset Record (in an electronic tool of its choice) which shall, as a minimum, contain the information as shown in Appendix 2 to this Contract.

The Inventory/Fixed Asset Record shall be kept updated by the Contractor. It shall be made available to the Agency upon request but as a minimum yearly during the execution of the Contract (and at completion of each Project Phase as per ECSS-M-ST-10 if applicable). A final consolidated record shall be submitted with the final contractual deliverables as foreseen in Appendix 2 to this Contract.

If the Inventory/Fixed Asset Record also includes any of those items which fall within the scope of Article 2 of the Contract, these items are to be clearly set apart.

Items, for which no place of delivery has been identified in Article 2 of this Contract, are subject to the following provisions:

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

- a) the right to claim delivery to the Agency and transfer of ownership (the latter if applicable) - with issue of appropriate instructions concerning packing and shipment (at the Contractor's expense);
- b) the right to claim or retain ownership and to negotiate with the Contractor a loan agreement if the Contractor is interested in keeping and using an item, with loan conditions making the Contractor responsible for the custody, the delayed delivery and the risks involved (at the Contractor's expenses);
- c) the right to extend the custody of an item to the Contractor and to postpone its delivery to the Agency and the associated transfer of ownership – on conditions to be negotiated;
- d) the renunciation of any rights to claim delivery and to claim transfer of ownership, leaving the item definitively in the possession and in the ownership of the Contractor, with or without financial compensation for the Agency (e.g. repurchase by the Contractor) and with or without special instruction,
- e) the right to request the Contractor to dispose of an item on conditions to be negotiated.

Should the Agency decide to transfer an ESA Fixed Asset to a Third Party or to dispose of the Fixed Asset, the Contractor shall provide the full inventory information of the Fixed Asset to the Agency and complete the transfer or disposal forms to be provided by the Agency upon request by the Contractor. The information to be given by the Contractor in the forms shall be agreed with the Agency.

The decisions taken by the Agency shall lead to instructions or negotiations, as the case may be, and the results shall be recorded in the relevant sections of the Contract Closure Documentation (CCD) as found in Annex A to Appendix 1 to the Contract. The CCD shall not be finalised and signed before disposition of all items has been given by the Agency and recorded in the documentation.

Electronically signed by the Parties to this Contract,

In: Prague

In: Villanueva de la Cañada

On: 12.9.2022
.....

On: 8.9.2022
.....

For the Institute of Atmospheric Physics
of the Czech Academy of Science (IAP CAS)

For the European Space Agency (ESA)

Radan Huth
Director

Markus Kissler-Patig
Head of the Science and Operations
Department

Ostatní stránky nejsou určeny ke zveřejnění.