

**Contract**  
**Characterisation of Thermal and Mechanical**  
**Performance of SIM Cryostat Straps**

ESA Contract No. 4000138900/22/NL/GP/gg

**Contract no. 8005-0001**  
**OCZ Project 9014**

**OHB Czechspace s.r.o.**

**with**

**Ústav fyziky materiálů AV ČR, v. v. i.**

## CONTRACT

Between:

**OHb Czechspace s.r.o.**  
(hereinafter called “the Contractor” or “OCZ”),

whose registered office is at:  
Purkyňova 648/125,  
612 00 Brno,  
Czech Republic,

represented by Mrs. Ariane Wyen its Managing Director of the other part,

and:

**Ústav fyziky materiálů AV ČR, v. v. i.**  
(hereinafter called the “the Subcontractor” or “IPM”),

whose registered office is at:  
Žižkova 513/22,  
616 00 Brno,  
Czech Republic,

represented by Mr. Tomáš Kruml its Director, of the other part,

the following has been agreed:

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## **ARTICLE 1 - SUBJECT OF THE CONTRACT – APPLICABLE DOCUMENTS**

### **1.1. Subject of the Contract**

1.1.1. The Subcontractor, as further described in Appendix 2, undertakes to propose materials and carry out the tests of the selected materials for the characterisation of thermal and mechanical performance of SIM Cryostat Straps, to deliver the hardware, and documentation as described herein, and to make an oral presentation of the results.

### **1.2. Applicable Documents**

The work shall be performed in accordance with the following documents, listed in order of precedence, in case of conflict:

- a) The Articles of this Contract with its PDCC Annex and its Appendix 1 (Payment Plan and other Financial Conditions);
- b) The General Clauses and Conditions for ESA Contracts (herein referred to as the “GCC”), reference ESA/REG/002, rev. 3, not attached hereto but known to both Parties and available on <https://esastar-publication.sso.esa.int/supportingDocumentation>, under “Reference Documentation” – “Administrative Documents”, as amended by this Contract;
- c) Appendix 2: The Statement of Work, reference ESA-TEC-SOW-02461, issue 1, revision 1, dated 24 February 2022, not attached hereto but known to both Parties;
- d)
- e) Appendix 3 hereto: The Standard Requirements for Management, Reporting, Meetings and Deliverables (rev 5: 2018-10) and its Annex A: Layout for Contract Closure Documentation (in its latest version); and
- f) The signed Minutes of the negotiation meeting, issue 01 held on 25 July 2022, reference CRYSA-OCZ-DEV-MOM-00007, not attached hereto but known to both Parties.
- g) Cover Letter of Proposal from IPM (as subcontractor) to OHb Czechspace (prime) in the frame of OCZ-22-36-01 proposal, not attached hereto but known to both Parties.

## **ARTICLE 2 - DELIVERY**

### **2.1. Place and Dates of Delivery**

#### **2.1.1 Documents**

The Subcontractor shall, during the performance of this Contract, deliver all documentation and reports specified in the Volume 3: Implementation Proposal, in an electronic file. These shall be sent to the Contractor's Technical Officer mentioned in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, unless otherwise specified,

#### **2.1.2 Hardware**

The hardware specified in the Volume 3: Implementation Proposal shall be delivered to the Contractor's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than **29 March 2024**.

#### **2.1.3 Contract Closure Documentation**

The Contract Closure form (Appendix 3, Annex A) shall be delivered in draft format by email to the Contractor's authorised representatives specified in Article 5, Clause 5, Sub-Clause 5.1 for review, and approval, and thereafter in one (1) signed set of documentation, not later than the time of submitting the invoice(s) for the Final Settlement (see also Sub-Article 3.2.2 here below).

## **ARTICLE 3 - PRICE & PAYMENT**

### **3.1. Price**

The price of this Contract amounts to:

105,000 EUR  
(One hundred and five thousand Euro),

In accordance with the ESA Contract No. 4000138900/22/NL/GP/gg the EUROPEAN SPACE AGENCY (hereinafter called “ESA” or “Agency”) may decide that certain items produced or purchased under the Contract during its implementation (see Article 4 below) shall become ESA Fixed Assets. Such items shall be identified as becoming ESA Fixed Assets by means of a Contract Change Notice.

3.1.1 The type of price is the following:

A Firm Fixed Price as defined in Section 2.1 of Annex II to the GCC.

3.1.2 The above-mentioned price does not include any taxes or duties in the Member States of the Contractor.

3.1.3 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS® 2020, to the addressees specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract. Reference to INCOTERMS® in this provision is exclusively for the purpose of price definition.

### **3.2. Payment**

3.2.1 General provisions

The Payment Plan and Advance Payment(s) off-setting conditions applicable to this Contract are specified in Appendix 1 hereto.

The Advance Payment constitutes a debt of the Subcontractor to the Contractor until it has been set-off against subsequent milestone(s) as shown in Appendix 1 hereto.

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, 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.

When releasing the payment for a given milestone, if applicable, the Contractor’s payment shall be made after due deduction of the corresponding off-set of the Advance Payment(s) as per the conditions of Appendix 1 to the Contract (Payment plan and Advance Payment(s) and other Financial Conditions).

In case of partial payment, the Contractor 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.

Payments shall be made within thirty (30) calendar days of receipt at Contractor's Finance Office of the documents listed and fulfilment of the requirements as specified in Article 3.2.2 below. Only upon fulfilment of these requirements shall the invoice be regarded as due by the Contractor.

Payments shall be made by the Contractor in EUR to the account specified by the Subcontractor. 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 Contractor on time if the Contractor's orders of payment reach the Contractor's bank within the payment period stipulated in the paragraph above.

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

Any questions concerning the latest status of due invoices can be addressed to the Contractor's finance department (mail to: xxxxxxxxxxxxxxxxxxxxxxxxxxxxx).

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

3.2.2 Requirements for Advance Payment Requests (APR) and invoices being regarded as due:

Advance Payment (non-applicable):

- APR: to be submitted after signature of this Contract by both Parties.

Progress Payment(s):

- Milestone Achievement Confirmation (MAC/GRN) hereinafter referred to as "confirmation" with supporting documentation attached in OCZ SharePoint. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Appendix 1 hereto.

and

- Invoice(s).

Final Settlement:

- Confirmation, with supporting documentation attached in OCZ SharePoint. The supporting documentation shall justify the actual achievement of the milestones as defined in the Payment Plan specified in Appendix 1 hereto;

and

- Invoice(s);

and



- Receipt and/or acceptance, by the Contractor, of all deliverable items, of the services to be rendered and other obligations to be fulfilled, in accordance with the terms of this Contract;
- The signed Contract Closure Documentation using the template provided in Appendix 3, Annex A.

### 3.2.3 Implementation of payments conditions

The Subcontractor shall ensure that all APR, invoices and confirmations are submitted for payment exclusively by mail to the Contractor's finance department (mail to: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx).

The Contractor shall credit the account of the Subcontractor to the Subcontractor's benefit.

The ESA and the Contractor reserve the right to visit the Subcontractor's premises and ascertain the progress of the work being performed under the Contract, prior to making the progress payment concerned.

The Contractor is obliged to, upon request at any time by the ESA, submit the payment conditions/provisions of individual subcontracts to the ESA for approval (if requested before the subcontract is placed) or verification.

## **ARTICLE 4 - 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 Contract Change Notice (CCN);
- iii. if any, Customer Furnished Items (see Article 5, Clause 11 of the Contract) and/or Items Made Available by the ESA (see Article 5, Clause 12 of the Contract).

The Subcontractor 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 ESA’s annual financial accounts.

The Subcontractor 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 4 to this Contract.

The Inventory/Fixed Asset Record shall be kept updated by the Subcontractor. It shall be made available to the Contractor and ESA 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 4 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 ESA shall take decisions regarding the final destination and final ownership of each item listed in the Inventory/Fixed Asset Record. The ESA 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 ESA 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 Subcontractor a Loan Agreement if the Subcontractor is interested in keeping and using an item, with loan conditions making the Subcontractor responsible for the custody, the delayed delivery and the risks involved (at the Subcontractor’s expenses);
- c) the right to extend the custody of an item to the Subcontractor and to postpone its delivery to the ESA 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 Subcontractor, with or without financial compensation for the ESA (e.g. repurchase by the Subcontractor) and with or without special instruction,
- e) the right to request the Subcontractor to dispose of an item on conditions to be negotiated.

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

The decisions taken by the ESA 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 3 of the Contract. The CCD shall not be finalised and signed before disposition of all items has been given by the ESA and recorded in the documentation.

**ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC**

The General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002., rev. 3 (GCC), apply to this Contract with the following complements and amendments:

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

**CLAUSE 2: APPROVAL AND ENTRY INTO FORCE**

For the purpose of this Contract, the authorised representative of the Managing Director is MS Lucie Cervera Siglerová, the Proxy of OHb Czechspace and Head of Finance and Administration.

**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 Contractor's Representatives**

The Contractor's representatives are:

- a) Ms Radka Václavíková for project management or a person duly authorised by her (the "Project Manager and Technical Officer").

All correspondence for project management matters shall be addressed as follows:

	To:	With copy to:
Name	xxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxx
Telephone No.	+420 xxx xxx xxx	+420 xxx xxx xxx
Email Address	xxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxx
Mail Address	OHb Czechspace s.r.o. Purkyňova 648/125 612 00 Brno, Czech Republic	

- b) xxxxxxxxxxxxxxxxxxx for technical matters or a person duly authorised by him (the "Technical Lead").

All correspondence for technical matters shall be addressed as follows:

	To:	With copy to:
Name	xxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxx
Telephone No.	+420 xxx xxx xxx	+420 xxx xxx xxx
Email Address	xxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxx
Mail Address	OH B Czechspace s.r.o. Purkyňova 648/125 612 00 Brno, Czech Republic	

- c) xxxxxxxxxxxxxxxxxxxxxxxxxx for contractual and administrative matters or a person duly authorised by her (the “Contracts Officer”).

All correspondence for contractual and administrative matters shall be addressed as follows:

	To:	With copy to:
Name	xxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxx
Telephone No.	+420 xxx xxx xxx	+420 xxx xxx xxx
Email Address	xxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxx
Mail Address	OH B Czechspace s.r.o. Purkyňova 648/125 612 00 Brno, Czech Republic	

- d) Personal Data Protection matters shall be addressed to the Contracts Officer mentioned in Sub-clause 5.2 b) above.

**Sub-Clause 5.2: The Subcontractor’s Representatives**

The Contractor’s representatives are:

a) for contractual and administrative matters as follows:

	To:	With copy to:
Name	xxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxx
Telephone No.	+420 xxx xxx xxx	+420 xxx xxx xxx
Email Address	xxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxx

b) for technical matters as follows:

	To:	With copy to:
Name	xxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxx
Telephone No.	+420 xxx xxx xxx	+420 xxx xxx xxx
Email Address	xxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxx

**CLAUSE 6: PUBLICITY RELATING TO CONTRACTS**

The link to the ESA logo in this clause is replaced with the following link:  
<https://brand.esa.int/logo>.

**CLAUSE 8: GENERAL CONDITIONS OF EXECUTION**

The following provision is added to Clause 8 of the GCC:

- 8.8 In the performance of its obligations under this Contract, without prejudice to the relevant Clauses of the GCC, the Subcontractor shall comply, at all times, with the eligibility requirements identified in Article 18 paragraph 2 of the ESA’s Procurement Regulations<sup>1</sup>.
- 8.9 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.

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<sup>1</sup> ESA/REG/001 available on esa-star Publication under Reference Documentation/Administrative Documents at <https://esastar-publication.sso.esa.int/supportingDocumentation>

## **CLAUSE 10: ESA CONTRACT**

A) As the main customer or the project Characterisation of Thermal and Mechanical Performance of SIM Cryostat Straps is ESA

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),

(ii) contractual coverage of activities already kicked-off,

the said Subcontractor may directly contact the Agency at: [XXXXXXXXXXXXXXXXXXXXXXXXXXXX](mailto:XXXXXXXXXXXXXXXXXXXXXXXXXXXX).

B) Any Subcontractor contacting the Agency through the above email shall document the steps already taken towards its direct customer in the consortium in order to resolve the issue and shall document that the Contractor has been informed of the issue.

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.

## **CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)**

It is not foreseen that the Contractor will provide any Items in accordance with Clause 11 of the GCC to the Subcontractor.

## **CLAUSE 12: ITEMS MADE AVAILABLE BY THE CONTRACTOR**

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

## **CLAUSE 13: CHANGES**

The template of a Contract Change Notice (CCN) is attached hereto as Appendix 5.

Further to Sub-Clause 13.1 "Classification of Changes", "Class B Changes", it shall be noted that the Subcontractor is obliged to raise Class B CCNs in the event of inter alia:

- any changes to the scope, contents, execution or redistribution within the Contractor's consortium, of the work under this Contract, proposed by the Subcontractor;
- any changes to the Contractor's consortium composition such as addition, removal or replacement of any other subcontractor, proposed by the Subcontractor;
- any reallocation of the overall Contract price among the Contractor's consortium members.

Any Change Request submitted to the Contractor shall be addressed to the Contractor's Contracts Officer mentioned in Article 5, Clause 5, Sub-Clause 5.1 b) of the Contract.

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

The Subcontractor may mark the deliverables documents with the following:

“© [COMPANY NAME] [YEAR OF PUBLICATION]

The copyright in this document is vested in [COMPANY NAME].

This document may only be reproduced in whole or in part, or stored in a retrieval system, or transmitted in any form, or by any means electronic, mechanical, photocopying or otherwise, either with the prior permission of [COMPANY NAME] or in accordance with the terms of OHb Czechspace Contract No. 8005-0001.”

The following provision is added to Sub-Clause 14.3 of the GCC:

Either Party may implement Sub-Clause 14.3 of the GCC should unknown consequences of the COVID-19 outbreak at the time of signature of the present Contract affect the performance of its obligations, despite such event being known to the Parties at the time of Contract signature.

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

The following provision is added as Sub-Clause 15.3.6 of the GCC:

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

#### **CLAUSE 17: PENALTIES/INCENTIVES**

Penalties for late delivery do not apply.



### **CLAUSE 27: PRICING**

Sub-Clauses 27.3 and 27.4 do not apply, unless in case of termination as per Clause 30 of the GCC.

### **CLAUSE 34: APPLICABLE LAW**

The substantive law referred to in Clause 34 of the GCC is the law of the Czech Republic. The scope of its applicability is as laid down in the said Clause of the GCC.

### **CLAUSE 35: DISPUTE RESOLUTION**

The arbitration proceedings referred to in Clause 35 of the GCC shall take place in Brno, the Czech Republic.

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

For the purpose of this Contract:

- Part II, Option A of the GCC shall apply, as modified by the special provisions below.
- The free 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 Contractor in the format agreed with the Contractor 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 Subcontractor shall not mark any documents as “Proprietary Information” unless agreed in advance with the Contractor. Any request from the Subcontractor shall be submitted accompanied by an appropriate justification.

The following provisions are added to Sub-Clause 37.4 of the GCC:

- a) The Agency shall have the right to disclose, at any time including throughout the duration of this Contract, the technical part of the Contractor’s proposal and any information generated in the frame of this Contract, to any Agency Contractor or Sub-Contractor performing work for the Agency’s Own Requirements.
- b) If approved by the Member/Participating States, the Agency’s right of dissemination detailed under a) here above, is also extended to non-Member States and to individuals, companies, bodies or organisations, residing in non-Member States, collaborating or participating in official activities or programmes of the Agency, provided that the information concerned is exclusively used for the purpose of the Agency’s Science Programme.

## **CLAUSE 38: DISCLOSURE**

The following provisions are added to Sub-Clause 38 of the GCC:

### Sub-Clause 38.1

The provisions of Sub-Clause 38.1 shall apply to all documents, data and information supplied by the Agency to the Contractor in the frame of the Contract - whether marked "Proprietary Information" or "restricted use" – or not, including all documents, data and information originating from parallel activities, which might be supplied through the Agency. It shall be noted that the Contractor shall be entitled to disclose such documentation, data and information to approved sub-contractors as required, as per the conditions of this Contract.

### Sub-Clause 38.2:

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.

In support of the Agency's need to ensure proper technical coordination among the various activities of the Agency's Science Programme, the Agency's right of dissemination shall include all Technical Documentation, information, data and results or any part thereof, generated, used or delivered in the frame of the Contract during the course and after the end of the activity, except as provided for in sub-clause 37.4.a) here above and in Clause 43 here below.

In the event that the Contractor wishes to mark certain items "Proprietary Information", he must obtain the Agency's prior written approval, which will only be granted at the Agency's discretion for information, documentation and software (including Source Code) that relate to (i) Background Intellectual Property Rights identified in Clause 43.1 here below, according to licences granted under Clause 43.4, and to (ii) Sensitive Commercial Information identified as such in the contract. Any request to mark any item "Proprietary Information" must be substantiated with supporting justification.

## **CLAUSE 41: USE OF INTELLECTUAL PROPERTY RIGHTS**

Sub-clause 41.1(a) shall be implemented as follows with respect to the Contractor's and ESA's right to licences for items covered by Intellectual Property Rights (IPR):

By signing this Contract, the Subcontractor grants the Contractor and ESA the irrevocable, non-exclusive, transferable and royalty free worldwide licence which is not otherwise granted under a separate agreement in the present Contract, to use all Intellectual Property Rights (IPR) arising from work performed under the Contract for the Contractor's and/or ESA's Own Requirements, which includes the right to grant sub-licences and exchange information protected by IPR with its partners in the frame of the international cooperation for the ESA's Science Programme.

The rights of Participating States and Persons and Bodies to such licences, remain as stated in sub-clause 41.1(a) of the GCC.

#### **CLAUSE 42: SOFTWARE**

The following provisions are added to Clause 42.1:

1. In respect of any software developed wholly or primarily under this Contract, the Subcontractor hereby grants to ESA and the Member States a free of charge, non- exclusive, irrevocable license, to use, copy and modify the deliverable Software for their own requirements in the field of space activities, research and technology and their space applications as defined in the GCC. In addition, the Subcontractor hereby grants to ESA and the Member States the right to further grant royalty free sub-licenses of the Object Code of the Software without any restriction and sub-licenses of the Source Code of the Software under confidentiality terms for the above purposes to third parties residing within the territory of the Member States. This right shall apply to the ESA's Science Programme. A copy of the modified Software, if any, shall be available free of charge to the Contractor and Subcontractor.

2. In respect of any commercially available software, or software developed by the Subcontractor outside the scope of an ESA Contract, which has been utilized by the Subcontractor during the work under this Contract, a user licence shall be provided to ESA by the Subcontractor in order to ensure proper execution of ESA Project. Excepted from this is commercially available standard software such as Word®, Excel®, Matlab® etc.

Clauses 42.3, 42.8, 42.9, 42.10 and 42.11 shall not apply.

#### **CLAUSE 43: BACKGROUND INTELLECTUAL PROPERTY RIGHTS**

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

- a) It is recognized by the Parties that the Subcontractor does not foresee to make use of any Background Intellectual Property for the work under this Contract. If the Subcontractor has not identified Background Intellectual Property Rights by the end of the Contract, all Intellectual property Rights used during the execution of the Contract are treated as arising from work performed under the Contract, unless and until the Subcontractor provides the Contractor with evidence of the relevant Background Intellectual Property Rights.
- b) In the event that the Subcontractor, after the signature of the Contract, invokes the existence of any Background Intellectual Property to be used for the purposes of the present Contract, the Subcontractor shall provide conclusive evidence to the Contractor of the existence of this Background Intellectual Property and shall justify the reasons for which the existence of this Background Intellectual Property was not invoked before the Contract signature.

If conclusive evidence and appropriate justification are provided by the Subcontractor, the Parties shall formalise a Contract Change Notice in accordance with Clause 13 here above, specifying in detail which Information has been recognised as Background Intellectual Property.

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

#### **CLAUSE 44: EXPLOITATION**

The following is added to Clause 44:

- 44.5 For the purposes of sub-clause 44.2 here above, the period within which the Contractor shall inform the Contractor of its intention not to exploit Intellectual Property Rights arising from work performed under this Contract, is six months from the date of the Contractor having been notified by the Subcontractor of the existence of such potential Intellectual Property Rights.
- 44.6 Pursuant to Clause 44.4, the Subcontractor shall provide reports of exploitation upon request by the Contractor or ESA. The parties will agree on the details thereof, including any necessary funding, as and when such request is made.

Electronically signed by the Parties to this Contract,

In: ...Brno.....

In: ...Brno.....

On: ....27. 9. 2022.....

On: ....26. 9. 2022.....

For Ústav fyziky materiálů AV ČR, v. v. i.

For OHb Czechspace s.r.o.

-----  
Mr Tomáš Kruml  
Director

-----  
Ms Ariane Wyen  
Managing Director

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

This “Controller to Controller” Annex governs the processing of Personal Data exchanged by the Parties, acting as separate Controllers, in the frame of the Contract. Such Annex forms an integral part of the Contract. In case of conflict between the terms and conditions of the Contract and the terms and conditions of this Annex, the terms and conditions of this Annex shall prevail.

This Annex survives the expiration or termination of the Contract for as long as the Personal Data are protected by the Data Privacy Regulations.

### 1. DEFINITIONS

The following specific definitions apply:

- (i) “Agreed Territory” (of Processing) means:
  - a) ESA Member States, as they are listed in the ESA website at URL:  
[https://www.esa.int/About\\_Us/Corporate\\_news/Member\\_States\\_Cooperating\\_States](https://www.esa.int/About_Us/Corporate_news/Member_States_Cooperating_States)
  - b) European Union;
  - c) countries recognized by the European Commission as ensuring an Adequate Level of Protection of Personal Data under the European Union’s legal framework.
- (ii) “Data Privacy Regulations” means respectively:
  - a) ESA PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at URL:  
[http://www.esa.int/About\\_Us/Law\\_at\\_ESA/Highlights\\_of\\_ESA\\_rules\\_and\\_regulations](http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations)
  - b) the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing which provide an Adequate Level of Protection under the ESA PDP Framework (e.g EU Regulations in the field of personal data protection, including but not limited to the General Data Protection Regulation (Regulation (EU) nr. 2016/679) (hereinafter “GDPR”).
- (iii) “Personnel” means:
  - a) with respect to the Contractor: any employee, agent or representative acting under the responsibility of the Contractor or, if subcontracting is permitted, of Contractor’s subcontractors;
  - b) with respect to ESA: any employee, agent or representative acting under the responsibility of ESA (e.g. staff members and seconded agents, consultants experts or employees of third parties).

With respect to terms used with capitals in this Annex (e.g. “Controller”, “Personal Data” etc.) but not defined above, reference is made to the definitions set forth in the Data Privacy Regulations applicable according to Article 2 below.

### 2. GENERAL

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

- a) the Contractor is governed by the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing, which provide an Adequate Level of Protection under the ESA PDP Framework (e.g. EU Regulations in the field of personal data protection, including but not limited to the GDPR.
- b) ESA is governed by PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at the URL:  
[http://www.esa.int/About\\_Us/Law\\_at\\_ESA/Highlights\\_of\\_ESA\\_rules\\_and\\_regulations](http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations)

- 2.2. The Parties are considered separate Data Controllers of the Personal Data, with each Party being able to determine the purpose and means of Processing the Personal Data under its control in accordance with its privacy statement.
- 2.3 The Personal Data exchanged by the Parties in the frame of this Contract will only be processed for:
  - a) the performance of the Contract, including implementation, management, monitoring, audits and the fulfilment of the obligations set out in this Annex;
  - b) the management of the relationship of the Parties in relation to the Contract, notably for administrative, financial, audit or for communication purposes;
  - c) the compliance with any legal or regulatory obligation to which a Party is subject;
  - d) the compliance, in case the performance of the Contract requires access to the Parties’ premises, with the health, safety and security requirements, legal or regulatory obligations applicable to the respective Party in such matters.

### 3. PERSONAL DATA EXCHANGED BY THE PARTIES

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

- a) the Agency shall communicate to the Contractor only the Personal Data concerning ESA representatives/contact persons including name, work address, email and telephone numbers;
- b) the Contractor shall communicate to the Agency only:
  - (i) Personal Data concerning the Contractor’s representatives/contact persons including name, work address, email and telephone numbers;
  - (ii) Personal Data concerning the Contractor’s key Personnel, including title, name, work address, email, telephone numbers, education, professional experience, description of the person’s job and responsibilities and the precise assignment of the person to the activity under the Contract.
  - (iii) Sensitive Personal Data concerning the Contractor’s Personnel, performing work on-site ESA premises or having the need to access information provided by the Agency which is subject to security restrictions.

#### 4. PARTY'S OBLIGATIONS

4.1 Each Party is individually and separately responsible for complying with the level of protection resulting from its Data Privacy Regulations in relation to Personal Data, including the collection and update of the Personal Data that it communicates to the other Party, the lawfulness and the quality of such Personal Data and for the means by which they were collected. Should the legal basis for the collection of the Personal Data cease to exist or the quality of the Personal Data be affected, the Party will inform the other Party without undue delay.

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

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

#### 5. DATA RETENTION

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

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

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

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

#### 6. CONFIDENTIALITY

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

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

#### 7. SECURITY

The Parties shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the Processing and to the nature, scope, context and purpose of the Processing, in order to ensure the following as appropriate:

- a) the on-going confidentiality, integrity, availability and resilience of Processing systems and services;

- b) measures to protect Personal Data from accidental, unlawful or unauthorized access, use, destruction, loss, modification or transfer.

#### 8. DATA PROTECTION OFFICER/CONTACT POINT

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

#### 9. TRANSFER

The Party having received the other Party's Personal Data under the Contract shall Process (and have processed by its authorised subcontractors or sub-processors) such Personal Data only in the Agreed Territory of Processing. In case the Parties agreed otherwise, transfer of Personal Data outside the Agreed Territory shall only take place in accordance with Article 13 below.

#### 10. SUBCONTRACTORS

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

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

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

#### 11. PERSONAL DATA BREACHES

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

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

#### 12. LAW – DISPUTE RESOLUTION

Concerning Personal Data protection matters, notwithstanding any other provisions on the governing law set forth elsewhere in the Contract, the provisions set forth in the Data Privacy Regulations, as defined herein, will apply as mentioned in Article 2 herein and will prevail in case of conflict. Without prejudice to the foregoing, disputes between the Parties on Personal Data protection matters shall be settled in accordance with Clause 35 of the Contract.

#### 13. EU STANDARD CONTRACTUAL CLAUSES

13.1 Under the ESA Personal Data Protection Framework, the transfer of Personal Data towards a country not recognized as offering an Adequate Level of Protection may only be done after being authorised by the ESA Data Protection Officer (DPO) and subject to "adequate safeguards with respect to the protection of the Personal Data and data subject's rights".

13.2 As "adequate safeguards", the Parties agreed to adopt the level of protection resulting from the provisions of the EU Standard Contractual Clauses for the Transfer of Personal Data to Third Countries pursuant to Regulation (EU) 2016/679, in their latest version released / approved by the European Commission (hereinafter "EU SCC"), which shall be deemed included, by

reference, in the Contract, together with the Annexes of EU SCC filled in as appropriate, subject always to the prevailing principles applicable in relation to ESA:

- a) the provisions of EU SCC will apply mutatis mutandis, only to the extent compatible with the specific statute of ESA as international intergovernmental organisation and always subject to the application of ESA Convention, in particular its Annex I "Privileges and immunities" and its legal framework, including by PDP Framework available at [http://www.esa.int/About\\_Us/Law\\_at\\_ESA/Highlights\\_of\\_ESA\\_rules\\_and\\_regulations](http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations), which shall prevail in particular in case of conflict, ambiguity or inconsistency;
- b) any provision of the EU SCC referring a dispute to a national court or another national or international forum is deemed not applicable, given that the Parties agree that:
  - (i) any Personal Data-related incidents or disputes shall be submitted to the independent Data Protection Supervisory Authority established by ESA Council Resolution, in which case the Rules of Procedure for the Data Protection Supervisory Authority, as set forth ESA PDP Framework, shall apply;
  - (ii) any other matter giving rise to a dispute shall be referred to arbitration as per Clause 35 of the Contract.

c) such transfer shall only take place after obtaining the written authorisation by the ESA Data Protection Officer (DPO) in consideration of the:

- (i) annexes of the EU SCC, added to the Contract in particular:
  - Annex I.A [List of Parties : data exporter/data importer]
  - Annex I.B [Description of the transfer(s)]
  - Annex I.C [Competent Supervisory Authority]
  - Annex II [Technical and organisational measures, including Technical and Organisational Measures to Ensure the Security].
- (ii) the following selected module and options provided by the EU SCC, which are contractually agreed to by the Parties are applicable:

Module One of the EU SCC: Transfer Controller to Controller



**ARTICLE 6 - APPENDIX 1: PAYMENT PLAN AND OTHER FINANCIAL CONDITIONS**

*Part of the text has been deleted for business secrets*

## **APPENDIX 2: STATEMENT OF WORK**

See ESA-TEC-SOW-02461

## **APPENDIX 3: STANDARD REQUIREMENTS FOR MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES**

(Core text rev. 5: 2018-10)

This document contains the standard requirements for Management, Reporting, Meetings and Deliverables for Contracts to be placed by the Contractor. The applicable Statement of Work (Appendix 2 to the Contract) refers to the present document, and identifies requirements which are not applicable, which need modification or which shall apply in addition. The Statement of Work has priority over the present document in case of conflict.

### **1. MANAGEMENT**

#### **1.1. General**

The Subcontractor shall implement effective and economical management for the Project. Its nominated Project Manager shall be responsible for the management and execution of the work to be performed and, in the case of an industrial team, for the coordination and control of the industrial team's work.

#### **1.2. Access**

- a) During the course of the Contract, the Contractor and ESA shall be afforded free access to any plan, procedure, specification or other documentation relevant to the programme of work. Areas and equipment used during the development/testing activities associated with the Contract shall also be available for inspection and audit.
- b) The Subcontractor shall notify the Contractor at least three (3) weeks before the start of any test programme, or as mutually agreed, in order to enable the Contractor and/or ESA to select those tests that it wishes to witness. The Contractor and/or ESA shall notify the Subcontractor of its visit at least one (1) week in advance.

### **2. REPORTING**

#### **2.1. Minutes of Meeting**

- a) The Contractor is responsible for the preparation and distribution of the minutes of the meetings (see ECSS-M-ST-10C, rev. 1, section 5.2.2 for more details) held in connection with the Contract. Electronic versions shall be issued and distributed to all participants, not later than ten (10) days after the meeting concerned.
- b) The minutes shall clearly identify all agreements made and actions accepted at the meeting together with an update of the Action Item List (AIL) and the Document List. The minutes shall be signed.

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

## 2.2. Documents List

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

## 2.3. Action Item List (AIL)

The Subcontractor shall maintain an Action Item List (AIL, see ECSS-M-ST-10C, rev. 1, section 5.2.2.1 for more details) recording all actions agreed with the Contractor. Each item shall be uniquely identified with reference to the minutes of the meeting at which the action was agreed and the AIL will record generation date, due date, originator and the person instructed to take action. The AIL shall be reviewed at each progress meeting.

## 2.4. Bar-Chart Schedule

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

## 2.5. Risk Register

- a) The Subcontractor shall be responsible for maintaining a risk register, agreed at the kick-off meeting. This register shall identify potential risks, their likelihood and severity, and propose meaningful mitigation measures (see ECSS-M-ST-80C for more details).
- b) The Subcontractor shall present an up-to-date risk register in its progress reports for review at progress meetings.

## 2.6. Progress Reports

Every month, the Subcontractor shall provide a Progress Report to the Contractor's representatives, covering the activities carried out under the Contract (see ECSS-M-ST-10C, rev. 1, section 5.2.2.2 for more details). This report shall refer to the current activities shown on the latest issued bar-chart and shall give:

- a.1 action items completed during the reporting period;
- a.2 a status report on all long lead or critical delivery items;
- a.3 a description of progress: actual vs. schedule, milestones and events accomplished;
- a.4 reasons for slippages and/or problem areas, if any, and corrective actions planned and/or taken, with revised completion date per activity;

- a.5 events anticipated during the next reporting period (e.g. milestones reached);
- a.6 expected date for major schedule items;
- a.7 milestone payment status;
- a.8 status of risks.

For Subcontracts where the Subcontractor has been delegated the inspection of Fixed Assets, the last progress report of the calendar year shall, in addition, contain a draft comprehensive inspection plan (see Article 4 of the Contract).

### 2.7. Inventory/Fixed Asset Record

The Subcontractor shall provide the Inventory/Fixed Asset Record yearly (in the month of October).

The final version shall be provided together with the Contract Closure Documentation.

### 2.8. Problem Notification

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

### 2.9. Technical Documentation

- a) As they become available and not later than the dates indicated in the delivery plan, the Subcontractor shall submit, for the Contractor's approval, technical notes, engineering drawings, manufacturing plans, test plans, test procedures, specifications and Task/WP reports.
- b) Technical documentation to be discussed at a meeting with the Contractor shall be submitted two (2) weeks prior to the meeting.
- c) Technical documents from Subcontractors shall be submitted to the Agency only after review and acceptance by the Contractor and shall be passed to the Agency via the Contractor's formal interface to the Agency.
- d) Tests carried out under the Contract shall be performed according to test plans and test procedures approved by the Contractor's Technical Officer (see ECSS-E—ST-10-02C and ECSS-Q-20C, rev. 1 for more details).

## 3. MEETINGS

- a) The kick-off meeting shall take place at the Contractor's premises/via video or teleconference.
- b) Progress meetings shall be held at approximately two (2)- to three (3)-monthly intervals, alternating between Contractor premises and Subcontractor premises or by video- or teleconference.

- c) The final presentation shall take place at the Agency's premises, to a public audience, within twelve (12) months of Contract closure. During the course of the activity, the Agency will decide on the format for the final presentation (e.g. dedicated meeting, conference, specific event). Preference shall be given to a specific event where technologies related to a specific technology domain or technology theme are presented together.
- d) Additional meetings may be requested either by the Agency or the Contractor or the Subcontractor.
- e) The Subcontractor shall give to the Contractor prior notice of any meetings with Third Party(ies) to be held in connection with the Contract. The Contractor reserves the right of participation in such meetings.
- f) With due notice to the Contractor, the Agency reserves the right to invite Third Party(ies) to meetings to facilitate information exchange.
- g) For all meetings with the Contractor, the Subcontractor shall ensure that proper notice is given at least two (2) weeks in advance. ESA reserves the right to participate all meetings. The Subcontractor is responsible for ensuring the participation of its personnel, as needed.
- h) For each meeting, the Subcontractor shall propose an agenda in electronic form and shall compile and distribute hand-outs of any presentation given at the meeting.

#### 4. DELIVERABLES

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

##### 4.1. Documentation

- a) In addition to the documents to be delivered according to section 2 here above, the following documentation shall also be deliverable. In the case of alternative choices herein, the Statement of Work specifies which ones are applicable.
- b) All documentation deliverables mentioned hereunder (including all their constituent parts) shall also be delivered in electronic form in a format agreed by the Contractor (PDF format and the native format, and in other exchange formats where relevant (e.g. CAD, drawings, databases)).
- c) All the documentation shall be delivered on computer readable media (e.g. USB-keys) as agreed with the Contractor.
- d) The draft version of the documentation shall be sent to the Technical Officer in electronic format not later than two (2) weeks before the documentation is to be presented. The final version shall be provided in a number of copies and format specified in the Statement of Work.

- e) All documents shall bear the appropriate copyright notice. In all cases, this shall include the ESA activity name, ESA Contract number, deliverable number, date, status (draft), and version and/or revision number. The information shall be repeated consistently in the header or footer of every page.

#### 4.1.1. Technical Data Package

Each (design and development) Contract shall be completed with a Technical Data Package. For a Contract with Phases, the Technical Data Package shall be provided at the end of a Phase in the case that the Contractor decides not to proceed with the next Phase. The Technical Data Package consists of the final versions of all approved technical documents, delivered during the execution of the activity.

#### 4.1.2. Photographic Documentation

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

#### 4.1.3. Software Reuse File

Software Reuse File (SRF) is a deliverable item recording the Subcontractor's reuse of existing software at the various stages of the activity (SWRR, PDR, CDR, AR, etc.).

In the event of Subcontractor's reuse of existing software, the SRF shall include the following:

- An evaluation of the reuse potential of the software (ECSS-E-ST-40C 5.4.3.6 b.);
- The analysis of the potential reusability of existing software components (ECSS-E-ST-40C 5.4.3.7 a.);
- The assessment of the existing software with regards to the applicable functional, performance and quality requirements (ECSS-Q-ST-80C 6.2.7.3 a.);
- The analysis of the suitability of existing software for reuse to be complemented by an assessment of the following aspects (ECSS-Q-ST-80C 6.2.7.6 a.):
  1. the acceptance and warranty conditions;
  2. the available support documentation;
  3. the conditions of installation, preparation, training and use;
  4. the identification and registration by configuration management;
  5. maintenance responsibility and conditions, including the possibilities of changes;
  6. the durability and validity of methods and tools used in the initial development, that are envisaged to be used again;
  7. the copyright and Intellectual Property Rights constraints (modification rights);
  8. the licensing conditions;
  9. exportability constraints;
- The detailed configuration status of the reused software baseline (ECSS-Q-ST-80C 6.2.7.11 a.);

- For each software item, the SRF shall provide (or state the absence of) the following information (ECSS-E-ST-40C Software reuse file (SRF) – DRD <4> b.):
  1. software item name and main features;
  2. developer name;
  3. considered version and list of components;
  4. licensing conditions;
  5. industrial property and exportability constraints, if any;
  6. implementation language;
  7. development and execution environment (e.g. platform and operating system);
  8. applicable dispositions for warranty, maintenance, installation and training;
  9. commercial software necessary for software execution, if any;
  10. size of the software (e.g. number of source code lines and size of the executable code).

In addition to the above mentioned ECSS requirements:

The SRF shall characterise the deliverable software (i.e. including developed and existing reused software) in terms of constituent elements and the associated licensing schemes, including:

- a) The IPR situation of the developed software, as defined by the Contract;
- b) The Licence under which each of the reused software package is accessible by the end user;
- c) The software engineering technique that is used to put each of the reused software package together with the total software, including:
  1. the mechanism of communication (exec, pipes, rpc, function calls within a shared address space, etc.) and
  2. the semantics of the communication (what kinds of information are interchanged).
  3. The degree of integration of the software product into the developed software, including the potential use of static/dynamic linking.

Whether any modification has been made to the software package

NOTE: This is meant to determine whether the reused software packages are "combined" or "incorporated", in the meaning of the GNU Public Licence. As mentioned in the GPL Frequently Asked Questions, if the modules are included in the same executable file, they are definitely combined in one program. If modules are designed to run linked together in a shared address space, that almost surely means combining them into one program. By contrast, pipes, sockets and command-line arguments are communication mechanisms normally used between two (2) separate programs. So when they are used for communication, the modules normally are separate programs. But if the semantics of the communication are intimate enough, exchanging complex internal data structures, that could also be a basis to consider the two (2) parts as combined into a larger program.

- d) Whether the deliverable software is intended to be distributed as an aggregate (i.e. including developed and existing reused software) or only the developed software will be distributed while the user will need to download the reused software by himself.

#### 4.1.4. Contract Closure Documentation



The Contract Closure Documentation is a mandatory deliverable, due at the end of the Contract (or at the end of a Phase in case the Contractor decides not to proceed with the following Phase(s)). For the avoidance of doubt, “end of the Contract” shall mean the finalisation of a series of tasks as defined in the Statement of Work attached to this Contract. Therefore, work performed under Riders or Contract Change Notices adding new tasks with respect to the original Contract shall require separate Contract Closure Documentation. The contents of the Contract Closure Documentation shall conform to the layout provided in Annex A hereto.

#### 4.2. Hardware

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

#### 4.3. Computer Programs and Models

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

Annex:

Annex A: Layout for Contract Closure Documentation

**ANNEX A: LAYOUT FOR CONTRACT CLOSURE DOCUMENTATION  
(Rev 5: 2018-10)**

for  
**ESA Contract No. 4000xxxxxx/xx/XX/XXX/xxx**  
**"[INSERT ACTIVITY TITLE]"**,  
hereinafter referred as the "Contract"

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

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

<b>Type</b>	<b>Ref. No.</b>	<b>Name/Title</b>	<b>Description</b>	<b>Replacement Value (EUR)/ Other</b>	<b>Location (²)</b>	<b>Property of</b>	<b>Rights granted/ Specific Conditions (³) IPR</b>
<b>Documentation</b>							
<b>Hardware</b>							
<b>Software</b>			<i>(Delivery in Object code/ Source code?)</i>				
<b>Other</b>							

**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 4 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]**

<sup>2</sup> In case the item is not delivered to ESA, please indicate the location of the deliverable and the reason for non-delivery (e.g. loan agreement, waiver, future delivery, etc.).

<sup>3</sup> E.g. IPR constraints, deliverable containing proprietary background information (see also Table 2.1.4 below).

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

Item Name	ESA Inventory Number	Location	Insurance Value	ESA DECISION		
				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	ESA Inventory 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):

<b>Proprietary Information</b> ( <i>title, description</i> )	<b>Owner</b> ( <i>Contractor/ Subcontractor(s)/ Third Party(ies)</i> )	<b>Affected deliverable</b> ( <i>which documents, hardware, software, etc.</i> )	<b>Description impact on ESA's rights to the deliverable (4)</b>	<b>Other comments</b>

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<sup>4</sup> if not explicitly stated otherwise, the contractual stipulations shall prevail in case of conflict with the description provided in this table

**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:

<b>Intellectual Property Rights ("IPR") suitable for registration (i.e. "Registered Intellectual Property Rights" as per definition in Annex IV of the "GCC")</b>	<b>Current status</b> <i>[delete non applicable options]</i>
<i>[insert title of IPR #1 and give a short description]</i>	Registered: <i>[insert information on registration granted]</i> In the process of being registered: <i>[insert information on registration process]</i> Foreseen for registration: <i>[indicate timeline]</i> Not foreseen for registration: <i>[indicate reason]</i>
<i>[insert title of IPR #2 and give a short description]</i>	Registered: <i>[insert information on registration granted]</i> In the process of being registered: <i>[insert information on registration process]</i> Foreseen for registration: <i>[indicate timeline]</i> Not foreseen for registration: <i>[indicate reason]</i>
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)	
<b>Intellectual Property Rights ("IPR") not suitable for registration (i.e. not being "Registered</b>	

<b>Intellectual Property Rights" as per definition in Annex IV of the "GCC")</b>	
<i>[insert title of corresponding IPR]</i>	<i>[give a short description of such IPR]</i>
<i>[insert title of corresponding IPR]</i>	<i>[give a short description of such IPR]</i>

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

**4.1. 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.

**4.2. 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		

#### 4.3 **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.*

#### 4.4 **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.*



#### 4.5 Potential Non-Space Applications

.....  
Describe any potential non-space applications or products that may benefit from the technology that has been developed. Emphasise 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.

<p>The above statements provided in the various sections of this Annex A “Layout for Contract Closure Documentation” for ESA Contract No. <b>4000xxxxxx/xx/XX/XXX/xxx</b> <i>[insert the corresponding Contract number]</i> have been made after due verifications.</p> <p>The Contractor furthermore certifies that all its obligations with regard to Fixed Assets, if any, have been fulfilled.</p> <p>If required by ESA, an updated version shall be provided for incorporating amendments requested by ESA.</p>	
<p>Name of Contractor: <i>[insert Contractor name]</i></p>	
<p>Authorised signatory:  <i>[insert authorised signatory full name]</i></p>	<p><i>[signature of the Authorised signatory]</i></p>
<p>Date: <i>[insert date]</i></p>	

## APPENDIX 4: INVENTORY/FIXED ASSET RECORD

### 1.1. Content of electronic Inventory/Fixed Asset Record

The Subcontractor shall establish an electronic Inventory/Fixed Asset Record with, as a minimum, the following information:

For all items:

- Contract number/subcontract number if applicable;
- unique item number;
- confirmation that the item has been marked with the unique item number;
- description of item;
- part number/serial number/type code;
- quantity;
- system/subsystem;
- property owner;
- manufacturer;
- classification (category – see section 1.2 below);
- acquisition value (i.e. original purchase price or price at Contract signature as applicable);
- date of purchase or production (“in service date” if not corresponding with date of purchase/production);
- in-service date;
- foreseen useful life (to be agreed with ESA);
- physical location (e.g. facility, building, room);
- entity responsible for care and custody;
- related WBS code or other identifier to be coordinated with the Agency);
- description and date of any change to the property item;
- planned method of disposal (if applicable).

In addition to the above, the following information shall be added to those items that are identified as becoming ESA Fixed Assets in Article 3 of the Contract, as applicable:

- Acquisition value
  - revision of this value as a result of change(s) to the asset;
- Impairment report of each ESA Fixed Asset remaining in the custody of the Contractor after its acceptance by ESA (using the template that will be provided by the Agency upon announcement by the Contractor that the item has been impaired);
- date of acceptance by ESA (planned date of acceptance);
- foreseen handling after ESA’s acceptance (e.g. transfer to ESA, continuing in custody of the Contractor).

## 1.2. Classification of Inventory/Fixed Assets items

For the purpose of Inventory/Fixed Asset Control, items shall be classified into five (5) categories, according to the source and intended use of the items, as follows:

<b>Source/Purpose</b>	<b>Supplier-acquired Items</b>	<b>Customer-furnished Items</b>
Consumable items (e.g. parts, materials, supplies)	Class 1	Class 2
Capital items/production support equipment and tools (e.g. instruments, jigs, fixtures)	Class 3	Class 4
Items purchased by the supplier or its lower tier suppliers on their own account but amortised under the Contract	Class 5	

- Note 1: Consumable items are parts, materials, supplies, components, modules, minor expendable tools, assemblies, units and subsystems, which through the production process lose their identity and are absorbed directly or indirectly by the system/product to be provided under the Contract.
- Note 2: Consumable items are in principle not capitalised per item; however, before consumption they are identified as assets of the Agency under the collective term "Consumable".
- Note 3: Capital items/production support equipment and tools are jigs, fixtures, 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's and its lower tier suppliers' list of Agency's assets.

## **APPENDIX 5: CONTRACT CHANGE NOTICE**

For submission of a change as per Clause 13 of the General Conditions, the Subcontractor 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 Subcontractor'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 Subcontractor shall, on request of the Contractor, 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:	
		ESA Contract No.: <b>4000XXXXXXXX/xx/XX/XXX/xxx</b>	
CONTRACT CHANGE NOTICE No.		DATE:	
TITLE OF AREA AFFECTED (WORK PACKAGE ETC):		WP REF:	
		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:		CONTRACTOR'S CONTRACTS OFFICER:	
DATE:		DATE:	
[DISPOSITION RECORD OR OTHER AGREED CONDITION RECORDED WITH THE CCN APPROVAL]			
ESA TECHNICAL OFFICER:		ESA CONTRACTS OFFICER:	
DATE:		DATE:	