

Contract

SOVA

Satellite Observation of waVes in the Atmosphere

ESA Contract No. 4000138792/22/NL/MH/jxh

Contract no. 8009-0001

OCZ Project 9016

OHB Czechspace s.r.o.

with

**Institute of Atmospheric Physics of the Czech
Academy of Sciences**

CONTRACT

Between:

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

having its seat at: Purkyňova 648/125,
612 00 Brno,
Czech Republic,

represented by its Managing Director, Ms. Ariane Wyen,

of the one part,

and:

Institute of Atmospheric Physics of the Czech Academy of Sciences
(hereinafter called the “Subcontractor”),

whose registered office is at:
Boční II/1401,
141 00 Praha 4,
Czech Republic,

represented by its director, Prof. RNDR Radan Huth, DrSc.

of the other part,

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

TABLE OF CONTENTS

ARTICLE 1 - SUBJECT OF THE CONTRACT; GENERAL TERMS OF EXECUTION	6
ARTICLE 2 - DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY	9
ARTICLE 3 - PRICE.....	12
ARTICLE 4 - PAYMENTS AND INVOICING.....	13
ARTICLE 5 - ITEMS PRODUCED OR PURCHASED UNDER THE CONTRACT	16
ARTICLE 6 - SPECIFIC PROVISIONS	17
ARTICLE 7 - INTELLECTUAL PROPERTY RIGHTS	22

Annex:	Personal Data Controller to Controller Annex (“PDCC Annex”)
Appendix 1:	Specific Statement of Work
Appendix 2:	Generic Statement of Work
Appendix 3:	Project Baseline
Appendix 4:	Agency’s Statement of Work
Appendix 5:	Contract Change Notice

DEFINITIONS

“Advance Payment”	means a payment foreseen in the Contract intended to provide the Subcontractor with liquidity to allow the initiation of the contractual works.
“ESA Requirements”	means the activities and programmes undertaken by the ESA 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 OCZ in exchange of a price or another consideration, including any amendment to such agreement via a Contract Change Notice (“CCN”).
“Day”	means calendar day.
“ESA or Agency”	means the EUROPEAN SPACE AGENCY.
“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 Subcontractor 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 ESA 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 OCZ representatives, of a milestone defined in the milestone payment plan of a fixed price contract; (b) cost reports approved by the OCZ 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 OCZ to provide supplies or services in support of a Contract placed by the ESA.
“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 Subcontractor undertakes to perform the activity **SOVA Satellite Observation of waVes in the Atmosphere** (all hereafter referred to as the “Work”) and to deliver all the items listed in Appendix 1 and 2 to 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: Specific Statement of Work, reference SOVA-OCZ-SAT-SOW-00002, issue 01, dated 20/10/2022;
 - c) Appendix 2 hereto: Generic Statement of Work, reference SOVA-OCZ-SAT-SOW-00001, issue 01, dated 10/10/2022;
 - d) Appendix 3 hereto: Project Baseline, reference SOVA-OCZ-SAT-GL-00001, issue 01, dated 11/10/2022;
 - e) Appendix 4 hereto: the Agency’s Statement of Work, reference ESA-IPL-I-SOW-2020-001, issue 1, revision 1, dated 17/09/2020;
- 1.3 General Terms of Execution
 - 1.3.1 The Subcontractor’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 the Law of the Czech Republic.
 - 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 Brno, the 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 Subcontractor shall be fully responsible towards the OCZ for the proper execution of the Work.

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 related Contract with ESA.

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 Subcontractors' SME status as per certification model provided in the tender documentation.

- 1.3.5 Any publicity material prepared by the Subcontractor related to an activity performed by the Subcontractor in the context of this Contract shall acknowledge that the activity is/was carried out "Funded through an ESA Contract in the Czech Third Party Framework Project". It shall display the ESA logo if the ESA 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 and The Ministry of Transport of the Czech Republic.
- 1.3.6 In the discharge of its obligations under this Contract, the Subcontractor shall additionally comply with the Eligibility Requirements identified in Article 18, paragraphs 2 and 12, of the Procurement Regulations.

This applies at the moment of Contract signature as well as for the whole duration of the Contract.

- 1.3.7 The Subcontractor shall, in accordance with the Agency's Policy on the Prevention, Detection and Investigation of Fraud, 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.

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 OCZ possession.

2.1.2 Should it seem likely that the originally specified delivery date(s) may be exceeded, the Subcontractor shall immediately notify the OCZ in writing and provide a detailed justification for the delay.

2.1.3 No price adjustment in favour of the Subcontractor will be applicable for the period of delay in delivery.

Penalties for late delivery do not apply.

Should OCZ conclude that the delays in delivery have impaired the intended objectives of the Work, the provisions of Article 6.5 below shall apply.

2.1.4 The Subcontractor 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 OCZ reserves the right to return the affected items at the Subcontractor's expenses.

Should in the execution of this Contract a need arise to provide the OCZ with information which is subject to export control laws and regulations, the Subcontractor shall be responsible to ensure in all cases that such information is passed on to the OCZ 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 Subcontractor shall report to the OCZ the Force Majeure event and its immediate consequences within one (1) week after its occurrence. The Subcontractor 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 Subcontractor shall not be considered at default and its obligations under the Contract shall be suspended during the Force Majeure event. The Subcontractor 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 Subcontractor 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 OCZ.

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 six (6) weeks 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 6.6.2 and 6.6.4. No other payments, compensation or indemnities shall be due by the OCZ to the Subcontractor.

2.2 Acceptance and Rejection

The acceptance by the OCZ of the deliverables shall be declared upon verification, by the OCZ, that the Work has been performed in compliance with the OCZ 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 OCZ, within one (1) calendar month counting from the time of submission for acceptance. The provisions of Article 6.5 below shall apply in this respect.

2.3 Deliverable Documents

The Subcontractor shall, during the performance of this Contract, deliver all documentation and reports specified in Appendix 3 and 4 referred to in Article 1.2 d) and 1.2 e), in the format and quantities specified therein.

These shall be sent to the OCZ Technical Officer mentioned in Article 6.1, unless otherwise specified, in accordance with the following specific provisions:

2.3.1 The draft versions and inputs for the final documents [Final Report and Abstract] as defined in section 3.5 of Appendix 1 shall be submitted for approval, in electronic format, to the OCZ Technical Officer specified herein, not later than 12 months from the official Kick-off Meeting as noted in the KoM MoM.

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.

At the same time as delivery of the final documents, the Technical Data Package, containing all approved Technical Notes, shall be delivered by email in an electronic searchable, indexed and not encrypted PDF and original (WORD) format to the OCZ Technical Officer.

2.3.2 The signed electronic copy of the Contract Closure Documentation (Appendix 1, Annex A) shall be delivered to the OCZ Authorised Representatives not later than the time of submitting the invoice for the Final Settlement (Article 4.1.2 here below).

2.4 Other Deliverables

The software resulting from the Work hereunder shall be made available to the OCZ Technical Officer specified herein for inspection, not later than 12 months from the official Kick-off Meeting as noted in the KoM MoM.

ARTICLE 3 - PRICE

3.1 The total cost of this activity is estimated at:

27,805.73 EUR

(Twenty-seven Thousand Eight Hundred and Five Euro Seventy-Three Cents),

towards which the OCZ's contribution and total price of this Contract amounts to:

25,000 EUR

(Twenty-five Thousand Euro),

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

3.2 The price stated above does not include any value added taxes ("VAT") or import duties in the Member States of the Agency.

3.3 The price is stated as being Delivered Duty Paid ("DDP") for all deliverables, exclusive of import duties and VAT in accordance with the Incoterms[®] 2020, to the addressees mentioned, or referred to, in Article 6 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 Subcontractor's obligations under Article 2.1.4 above.

ARTICLE 4 - PAYMENTS AND INVOICING

4.1 Payments

Payments shall be made within sixty (60) days of receipt at accounting@ohb-czech.cz and fulfilment of the requirements specified in Articles 4.1.1 – 4.1.2 below. Only upon fulfilment of these requirements shall the OCZ regard the invoice as due.

Requirements to be fulfilled:

4.1.1 Progress Payments:

- Milestone Achievement Confirmation (“MAC”) (hereinafter referred to as “confirmation”) with supporting documentation, as necessary, send by the Subcontractor to accounting@ohb-czech.cz. The supporting documentation shall justify the actual achievement of the milestones as defined in the Payment Plan specified in Article 4.2 here below; and
- Invoice.

4.1.2 Final Settlement:

- Confirmation submitted by the Subcontractor with supporting documentation as necessary send to accounting@ohb-czech.cz. The supporting documentation shall justify the actual achievement of the milestone as defined in the Payment Plan specified in Article 4.2 here below; and
- Invoice; and
- Delivery, and acceptance by the OCZ, 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:

4.1.3 OCZ shall be responsible for approving or rejecting, within ten (10) Days of receipt, the relevant Subcontractors’ invoices and related supporting documents (e.g. MACs, Cost Reports).

OCZ and the Agency shall be afforded all the necessary visibility, whether remotely or by means of inspection of the Subcontractors’ premises, in order to ascertain the progress of the Work prior to authorising the relevant payment.

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

4.1.5 In the event that the achievement of a milestone is delayed but the milestone is partially met at the milestone planning date foreseen, the OCZ may, as an exception, effect a payment against an approved confirmation of the partially achieved milestone, not exceeding the value of the Work performed at the date of payment.

4.1.6 When releasing the payment for a given milestone, if applicable, the OCZ 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 OCZ shall deduct from the corresponding invoice(s) relative to the same milestone any outstanding amount of the Advance Payment(s) still to be off-set.

4.1.7 All invoices shall be submitted to the OCZ in electronic form via email: accounting@ohb-czech.cz

4.1.8 Payments shall be made by the OCZ in EURO 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 OCZ on time if the OCZ orders of payment reach the OCZ bank within the payment period stipulated in Article 4.1 above.

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



CZECHSPACE

4.2 The following Payment Plan is agreed for this Contract:

8009-0001_SOVA
ESA Contract No. 4000138792/22/NL/MH/jxh
OCZ Project 9016

Milestone (MS) Description	Schedule Date	Payments from OCZ to SubContractor (in Euro)	Country (ISO code)
Progress (MS 1): Upon successful Mission Definition Review and acceptance by the Agency of all related deliverable items [D1.1 – D1.9].	To + 4 months	8,750	CZ
Progress (MS 2): Upon successful Preliminary Requirements Review and acceptance by the Agency of all related deliverable items [D2.1 – D2.15].	To + 8 months	8,750	
Final Settlement (MS 3): Upon successful Final Review, 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.	To + 12 months	7,500	
TOTAL		25,000	

ARTICLE 5 - ITEMS PRODUCED OR PURCHASED UNDER THE CONTRACT

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

- 5.1 The title to the property of any items produced or purchased under the Contract, including electronic components, special jigs, tools, test equipment, and which are paid for under the Contract shall remain with the Subcontractor.

ARTICLE 6 - SPECIFIC PROVISIONS

6.1 Representatives of the Parties during Contract Execution

6.1.1 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:

OHB Czechspace s.r.o.
Purkyňova 648/125
612 00 Brno
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	OHBCzechspace s.r.o. Purkyňova 648/125 612 00 Brno Czech Republic
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6.1.2 Subcontractor’s Representatives:

The Subcontractor’s representatives are:
 Director, prof. RNDR Radan Huth, DrSc

All correspondence for the Contractor shall be addressed as follows:

Boční II/1401,
 14100 Praha 4,
 Czech Republic

a) for technical matters as follows:

	To:	With copy to:
Name		
Telephone No.		
Email Address		

c) for contractual and administrative matters as follows:

	To:	With copy to:
Name		
Telephone No.		
Email Address		

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

	To:
Name	
Telephone No.	
Email Address	
Mail Address	

- 6.1.3 Communications related to the Contract affecting its terms and conditions shall only bind the Parties, if signed by the OCZ and the Subcontractor's duly Authorised Representatives.

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.

6.2 Infringement of the Law – Infringement of Third Party Rights

- 6.2.1 The OCZ shall not be responsible if the Subcontractor infringes the laws or statutes of its country or of any other country whatsoever.

- 6.2.2 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 Subcontractor 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 Subcontractor 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 6.5.3 hereunder, if the infringement cannot be avoided.

Notwithstanding the above, the Subcontractor shall indemnify the OCZ and 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 OCZ or from a modification or combination of the deliverables due hereunder made by the Agency and/or OCZ after their acceptance.

6.3 Liabilities

- 6.3.1 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:

- 6.3.1.1. 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.

- 6.3.1.2. 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.

6.3.2 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.

6.4 Items Made Available by the OCZ

It is not foreseen that the OCZ will make any items available to the Subcontractor.

6.5 OCZ Rights in Case of Subcontractor's Under-Performance

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

6.5.1.2 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 OCZ reserves the right to terminate this Contract by giving written notice by registered mail.

6.5.2 Should the Subcontractor fail to obtain an export authorisation from the competent national authority, the OCZ shall have the right to terminate this Contract without further notice.

6.5.3 Termination of this Contract as specified above shall entail no compensation being due to the Subcontractor 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 OCZ.

6.6 Termination without fault of the Subcontractor

6.6.1 The OCZ 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 OCZ without fault of the Subcontractor, the Subcontractor shall, on receipt of the OCZ 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 ten (10) weeks.

6.6.2 Subject to the Subcontractor conforming with the instructions referred in Article 6.6.1, the OCZ shall take over from the Subcontractor at a fair and reasonable price all finished parts not yet delivered to the OCZ, all unused and undamaged material,

- bought-out components and items in the course of manufacture in the possession of the Subcontractor and properly obtained by or supplied to the Subcontractor for the performance of the Contract, except such materials, bought-out components and items in the course of manufacture as the Subcontractor shall, with the agreement of the OCZ, elect to retain.
- 6.6.3 a) The OCZ shall indemnify the Subcontractor 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 Subcontractor 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 6.6.1, represent a loss by the Subcontractor by reason of the termination of the Contract.
- b) The amount of compensation payable under Article 6.6.3 a) shall be fixed on the basis of evidence produced by the Subcontractor and accepted by the OCZ. It shall take account of the proportion of the Contract completed and shall be consistent with the provisions of Article 6.6.4.
- 6.6.4 The OCZ shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Subcontractor under the Contract, exceeds the total price for the Work set forth in the Contract.
- 6.7. Changes to this Contract
- 6.7.1 The OCZ reserves the right at any time to request a change to the requirements covered by this Contract. The OCZ may also accept changes proposed by the Subcontractor. The requesting Party shall communicate all change requests to the other Party in writing through the Parties' Representatives indicated in Article 6.1 above.
- 6.7.2 The cost impact relative to any change resulting from a request, by the OCZ, to modify the requirements covered by this Contract shall be borne by the OCZ. The Subcontractor shall be responsible for the consequences and shall bear the cost of any other change.
- 6.7.3 When responding to a change request issued by the OCZ or as a means to propose changes to the OCZ, the Subcontractor 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.
- 6.7.4 Upon evaluation and acceptance by the OCZ of a change proposal, any amendment to this Contract shall be introduced in the form of a Contract Change Notice (CCN) according to the CCN form attached in Appendix 2. In case of rejection, the OCZ shall inform the Subcontractor accordingly, together with the reasons for the rejection.

ARTICLE 7 - INTELLECTUAL PROPERTY RIGHTS

7.1 Information to be provided by the Subcontractor – Protection of information

7.1.1 Information, data, reports and results arising from Work performed under this Contract shall be delivered, in whole or in part, by OCZ to the Agency. The Agency shall have the right to make such information, data, reports and results available for the purpose of the Czech Third Party Framework Project and to support the Czech Republic in the Agency's projects where Czech entities take part, to use on the terms set out in the following clauses.

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

7.1.3 With the exception of the Agency, 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.

7.1.4 The obligations provided in Articles 7.1.2 and 7.1.3 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.

7.2 Ownership and Use of Intellectual Property Rights

7.2.1 Ownership of Intellectual Property Rights

The Subcontractor 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 Subcontractor shall as soon as possible report to OCZ and the Agency any results arising from such a Work which may in its opinion be protected as registered Intellectual Property Rights and state whether they intend to apply for such protection. At the Subcontractor's specific request in order to allow for filing of patent applications, OCZ shall inform the Agency not disclose any relevant information and results for a period of twelve (12) months from the date it was reported to OCZ and the Agency. In parallel the Subcontractor shall submit an analogous request to the Czech Third Party Framework Project Committee with copy to the Agency and OCZ.

The Subcontractor shall subsequently inform the OCZ and 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 OCZ, the Agency and The Ministry of Transport of the Czech Republic with all details on that application. The Subcontractor hereby grants the OCZ, the Agency and The Ministry of Transport of the Czech Republic an irrevocable right to use the information relative to that application, for their own requirements on the terms set out in Article 7.2.2 below. Nevertheless, unless agreed otherwise with the Subcontractor, the OCZ shall inform the Agency and shall not disclose such information until publication of the registration application. In parallel the Subcontractor shall submit an analogous request to the Czech Third Party Framework Project Committee with copy to the OCZ and the Agency.

7.2.2 Use of Intellectual Property Rights

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

- a) The Ministry of Transport of the Czech Republic, to use on a free, worldwide licence together with the right to grant sublicences for its own needs;
- b) the Agency, to use on a free, worldwide licence for the purpose of the Czech Third Party Framework Project and to support the Czech Republic in the Agency's projects where Czech entities take part. To this extent the Subcontractor undertakes, upon request by ESA, to grant the corresponding free, worldwide licence(s) to the party(ies) indicated by ESA.

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.

7.3 Background Intellectual Property

7.3.1 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 Subcontractor 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.

7.3.2 Use of Background Intellectual Property

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

Nevertheless, should the Subcontractor 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 Subcontractor shall grant to the OCZ and the Agency, and/or ensure that the OCZ and the Agency be granted, all the necessary rights in this respect.

7.4 The free licences provided for the benefit of ESA

The free licences provided on Intellectual Property arising from Work performed under this Contract and/or Background Intellectual Property indicated in Article 7.3 for the benefit of The Ministry of Transport of the Czech Republic and ESA and OCZ shall be deemed granted through signature of the present Contract and without the need to implement a separate licence.

7.5 Transfer outside the ESA Member States

Any transfer of Intellectual Property Rights or any product, process, application or result arising from work performed under the Contract by the Subcontractor to any entity outside the Czech Republic or any international organisation shall comply with all applicable laws including all export control laws, regulations, rules and procedures and any relevant international agreements relating to the export of goods and services.

Electronically signed by the Parties to this Contract,

In: Brno

In: :

On: 31.12.2022

On: 9.1.2023

For OHB Czechspace s.r.o.

For Institute of Atmospheric Physics of the
Czech Academy of Sciences

Ms Ariane WYEN
Managing Director

Prof. RNDR Radan Huth, DrSc.
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
 - 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
 - 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

- 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:
- under the Data Privacy Regulations, (e.g. in the frame of audits, inspections and incidents) or
 - 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:

- 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.
- 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:

- the on-going confidentiality, integrity, availability and resilience of Processing systems and services;
- 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:
- subcontracting is specifically authorised by Contract and the Subcontractors are indicated in the Contract;
 - 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 Article 1.3.3 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:
- 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, which shall prevail in particular in case of conflict, ambiguity or inconsistency;
 - 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:
 - 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;
 - 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

APPENDIX 1

SPECIFIC STATEMENT OF WORK, REFERENCE SOVA-OCZ-SAT-SOW-00002, ISSUE 01, DATED 20/10/2022

APPENDIX 2

**GENERIC STATEMENT OF WORK, REFERENCE SOVA-OCZ-SAT-SOW-00001, ISSUE
01, DATED 10/10/2022**

APPENDIX 3

**PROJECT BASELINE, REFERENCE SOVA-OCZ-SAT-GL-00001, ISSUE 01, DATED
11/10/2022**

APPENDIX 4

**THE AGENCY'S STATEMENT OF WORK, REFERENCE ESA-IPL-I-SOW-2020-001,
ISSUE 1, REVISION 1, DATED 17/09/2020**


APPENDIX 5

CONTRACT CHANGE NOTICE

For submission of a change, 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 (Subcontractor or OCZ);
- The description of the change (including Work Package Descriptions, Work Breakdown Structure);
- The reason for the change;
- The price breakdown in Euro (€), if any (breakdown by company, Phase, etc., including PSS A2 and PSS A8 forms);
- The Milestone Payment Plan for the CCN, if any;
- Effect on other Contract provisions;
- Start of Work - end of Work (including contractual delivery dates and overall planning, milestones, etc.);
- A CCN Form, as per the format below, signed by the Contractor's representatives.

The Contractor shall, on request of the Agency, provide additional documentary evidence. At the request of either Party, the proposed change may be discussed at a Change Review Board, consisting of both the Contracts Officer and the Technical Officer of each Party.

	DIRECTORATE:	Contractor:	
		ESA Contract No.: 4000XXXXXXXX/xx/XX/XXX/xxx	
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	
SUBCONTRACTOR'S PROJECT MANAGER:		SUBCONTRACTOR'S CONTRACTS OFFICER:	
DATE:		DATE:	
[DISPOSITION RECORD OR OTHER AGREED CONDITION RECORDED WITH THE CCN APPROVAL]			
OCZ TECHNICAL OFFICER:		OCZ CONTRACTS OFFICER:	
DATE:		DATE:	