

**Contract No. 2022/003
between S.A.B. Aerospace s.r.o. and J. Heyrovsky Institute
of Physical Chemistry**

SLAVIA

ENTERED BY AND BETWEEN

S.A.B. Aerospace s.r.o.

whose Registered Office is at:

Technická 23
616 00 Brno-Medlánky (Czech Republic)
VAT: CZ02588862

represented by Mr. Petr Kapoun, its Chief Executive Officer

hereinafter referred to as the "Customer"

ON THE ONE HAND

And

J. Heyrovsky Institute of Physical Chemistry

whose Registered Office is at:

Dolejšková 2155/3,
182 00 Praha 8 (Czech Republic)
VAT: CZ61388955

represented by prof. Martin Hof, Dr. rer. nat. DSc., its Director

Hereinafter referred to as "Subcontractor",

ON THE OTHER HAND

The following has been agreed between the Customer and the Subcontractor, hereinafter referred to as a "Party" and collectively as the "Parties":

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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.
- “Agency’s Own Requirements”** means the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1(a) and (b) of the European Space Agency Convention.
- “Contract”** means an agreement established in writing the subject of which is any activity carried out to- or for the Agency in exchange of a price or another consideration, including any amendment to such agreement via a Contract Change Notice (“CCN”).
- “Day”** means calendar day.
- “Force Majeure”** means an event which is, unforeseeable, unavoidable and external at the time of Contract signature, occurs beyond the control of the affected Party and renders the performance of the Contract impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.
- “Intellectual Property Rights”** means all Registered Intellectual Property Rights, and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world.
- “Legitimate Commercial Interests”** means an interest the 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 Agency programme according to Article V.1 (a) and (b) of the European Space Agency Convention.

“Participating State’s Own Public Requirements”

means a public programme in the field of space research and technology and their space applications fully funded or funded to a substantial extent by the Participating State.

“Persons and Bodies”

means any individual, partnership, company, research organisation or legal entity under the jurisdiction of a Participating State which, when relevant, meets the criteria set out in Article II (3) of Annex V to the European Space Agency Convention.

“Progress Payment”

means a payment that is made against:
(a) successful achievement, certified in writing by the Agency’s representatives, of a milestone defined in the milestone payment plan of a fixed price contract;
(b) cost reports approved by the Agency in a cost reimbursement contract for a period agreed in the Contract.

“Registered Intellectual Property Rights”

means all rights granted by law through registration with an authority or office (whether actually registered or in the form of applications) including all registered patents, utility models, designs, topography rights, domain names and trademarks or equivalent rights and rights of action anywhere in the world.

“Subcontractor”

means the economic operator who is under contract to a Contractor of the Agency to provide supplies or services in support of a Contract placed by the Agency.

“Third Party”

means a natural or legal person not having signed the Contract.

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

- 1.1 The Subcontractor undertakes to perform the activity “**SLAVIA**” (all hereafter referred to as the “Work”) and to deliver all the items listed in Article 2 and Appendix 1 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: the Agency’s Statement of Work, reference ESA-IPL-I-SOW-2020-001, issue 1, revision 1, dated 17/09/2020;
 - c) The Customer’s Updated Proposal, reference SLA-OFT-SAB_007-20, issue 2, revision 0, dated 2 August 2021, not attached hereto but known to both Parties.
- 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 Customer for the proper execution of the Work.
 - 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 Agency so requires. It shall also carry a disclaimer stating that the view expressed in such publications can in no way be taken to reflect the official opinion of the European Space Agency 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. The Subcontractor shall ensure that this provision is duly reflected in all subcontracts entered into for the purpose of this Contract.

ARTICLE 2 - DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY

2.1 General

2.1.1 Delivery shall be considered as effected only when the relevant deliverable items are in the Customer's possession.

2.1.2 Should it seem likely that the originally specified delivery date(s) may be exceeded, the Subcontractor shall immediately notify the Customer 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.

No penalty to be deducted from the Contract price shall apply in case of late delivery.

Should the Customer 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 Customer 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 Customer 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 Customer 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 Customer 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.

If the delay due to the Force Majeure exceeds three (3) months, the Parties are entitled to terminate the Contract by giving not less than two (2) months' written notice to the other Party,

unless the Parties agree to modify the Contract in order to take into account the effects of the Force Majeure.

In case of termination due to Force Majeure, the amount to be paid shall be calculated as per Articles 6.6.2 and 6.6.4. No other payments, compensation or indemnities shall be due by the Customer to the Subcontractor.

Either Party may implement Article 2.1.5 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.

2.2 Acceptance and Rejection

The acceptance by the Customer of the deliverables shall be declared upon verification, by the Customer, that the Work has been performed in compliance with the Customer's requirements and that the required results have been achieved. The said deliverables shall be considered as accepted in the absence of an explicit reaction in respect to the same, by the Customer, 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 contributions to the documentation and reports specified in Appendix 1 and in the Subcontractor's Proposal referred to in Article 1.2c) above, in the format and quantities specified therein.

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

- 2.3.1 The draft versions of the Subcontractor's contributions to the final documents [Final Report and Executive Summary Report] as defined in section 3.5 of Appendix 1 shall be submitted for approval, in electronic format, to the Customer's Technical Officer specified herein, not later than **15 November 2022**.

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 Customer's Technical Officer.

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

ARTICLE 3 - PRICE

3.1 The total cost of this activity is estimated at:

442,382 EUR
(Four Hundred Forty-Two Thousand Three Hundred Eighty-Two Euro),

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

67,623 EUR
(Sixty-Seven Thousand Six Hundred Twenty-Three 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 Any amount stated above does not include any value added taxes ("VAT") or import duties in the Member States of the Customer.
- 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 thirty (30) Days of receipt at Customer's Finance Office of the required documents and fulfilment of the requirements specified in Articles 4.1.1 – 4.1.3 below. Only upon fulfilment of these requirements shall the Customer regard the invoice as due.

Requirements to be fulfilled:

4.1.1 Advance Payment:

- Advance Payment Request ("APR"): to be submitted after signature of this Contract by both Parties. The Advance Payment constitutes a debt of the Subcontractor to the Customer until it has been set-off against subsequent milestones as shown in Article 4.2 here below.

4.1.2 Progress Payments:

- Milestone Achievement Confirmation ("MAC") (hereinafter referred to as "confirmation") with supporting documentation, as necessary, submitted by the Subcontractor. 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.

4.1.3 Final Settlement:

- Confirmation submitted by the Subcontractor with supporting documentation. 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 Customer, 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.

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 Customer 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 Customer's payment shall be made after due deduction of the corresponding off-set of the Advance Payment as per the conditions of Article 4.2 here below.

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

- 4.1.7 All invoices shall be submitted to the Customer in electronic form sent to:
[REDACTED]
- 4.1.8 Payments shall be made by the Customer 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).
- 4.1.9 Any special charges related to the execution of payments shall be borne by the Subcontractor.
- 4.1.10 Any questions concerning the latest status of due invoices can be addressed to the SAB Payment Officer (mail to: [REDACTED])

4.2 The following Payment Plan is agreed for this Contract:

Milestone (MS) Description	Schedule Date	Payments from SAB to (Prime) Subcontractor (in Euro)	Country (ISO code)
Progress (MS 1): Upon successful completion of WP 201 and successful MD review and acceptance by the Agency of all related deliverable items [D1.1-D1.10].	January 2022	16,906	CZ
Progress (MS 2): Upon successful completion of WP 301 and successful PR review and acceptance by the Agency of all related deliverable items [D2.1 – D2.16].	May 2022	25,697	
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.	November 2022	25,020	
TOTAL		67,623	

Advance Payment and other Financial Conditions:

Prime (P)	Company Name	ESA Entity Code	Country (ISO code)	Advance Payment (in Euro)	Offset against ¹	Offset by Euro	Condition for release of the Advance Payment
P	Ústav fyzikální chemie J. Heyrovského, v.v.i..	1000034713	CZ	10,143	MS 2 MS 3	2,029 8,114	Upon signature of the Contract by both Parties

¹ An SME has the right to request offset of the 35% advance at the end of the Contract, i.e. the last two milestones (ideally 25% at the last milestone and 10% at the preceding milestone), if this can be justified in view of the economic progress in the Contract.

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 Approval / Representatives of the Parties during Contract Execution

For the purpose of this Contract, the authorised representative of the Customer are:

Mr Petr Kapoun
Chief Executive Officer

The Customer'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.

6.1.1 All correspondence for the Customer shall be addressed as follows:

S.A.B. Aerospace s.r.o.,
Technická 23,
616 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]

a) for contractual and administrative matters as follows:

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

6.1.2 Subcontractor'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 Subcontractor shall be addressed as follows:

Ústav fyzikální chemie J. Heyrovského, v. v. i.
 Dolejškova 2155/3
 182 00 Praha 8

- 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]

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

6.2 Infringement of the Law – Infringement of Third Party Rights

6.2.1 The Customer 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 Customer 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 Customer or from a modification or combination of the deliverables due hereunder made by the Customer 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 Customer

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

6.5 Customer's 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 Customer 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 Customer 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 Customer 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 Customer.

6.6 Termination without fault of the Subcontractor

6.6.1 The Customer 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 Customer without fault of the Subcontractor, the Subcontractor shall, on receipt of the Customer's instructions, forthwith take the necessary steps to implement them. The Parties shall use their best efforts to mitigate the consequences of the termination. The period to be allowed to implement them shall be agreed between the Parties but shall not exceed three (3) months.

6.6.2 Subject to the Subcontractor conforming with the instructions referred in Article 6.6.1, the Customer shall take over from the Subcontractor at a fair and reasonable price all finished parts not yet delivered to the Customer, 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 Customer, elect to retain.

6.6.3 a) The Customer 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 Customer. 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 Customer 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 Customer reserves the right at any time to request a change to the requirements covered by this Contract. The Customer 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 Customer, to modify the requirements covered by this Contract shall be borne by the Customer. 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 Customer or as a means to propose changes to the Customer, 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 Customer 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 Customer shall inform the Subcontractor accordingly, together with the reasons for the rejection.

ARTICLE 7 - INTELLECTUAL PROPERTY RIGHTS

A standalone contract, called "COOPERATION AGREEMENT between S.A.B. Aerospace s.r.o. and J. Heyrovsky Institute of Physical Chemistry" concerning Intellectual Property Rights has been signed on 17. 12. 2021.

Electronically signed by the Parties to this Contract,

In: Brno

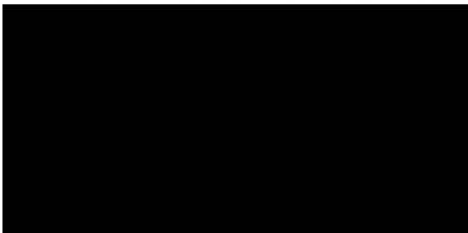
In: Prague

On: 22/2/2022

On: 10-02-2022

For S.A.B. Aerospace s.r.o.

For J. Heyrovsky Institute of Physical Chemistry



Mr. Petr KAPOUN
Chief Executive Officer



prof. Martin Hof, Dr. rer. nat. DSc.
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:
- 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 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:

- 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, 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



APENDIX 1


STATEMENT OF WORK

APPENDIX 2**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 Contractor's name and 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, 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 Subcontractor shall, on request of the Customer, 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.: 4000135915/21/NL/MH/kdj	
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:	