

**ESA Contract No.
xxxxxxxxxx/17/NL/BW**

with

[Contractor]

ATHENA – Magnetic Diverter

DRAFT CONTRACT

Between:

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

located at: 8-10 rue Mario Nikis,
75015 Paris,
France,

represented by Mr. Johann-Dietrich Wörner, its Director General,

through its establishment

The European Space Research and Technology Centre (ESTEC),

located at: Keplerlaan 1,
2201 AZ Noordwijk,
The Netherlands,

of the one part,

and:

.....
(hereinafter called “the Contractor” or “.....”),

whose Registered Office is at:

.....
.....
.....

represented by....., its.....,

of the other part,

the following has been agreed:

TABLE OF CONTENTS:

ARTICLE 1 - SUBJECT OF THE CONTRACT – APPLICABLE DOCUMENTS..... 5

 1.1. Subject of the Contract 5

 1.2. Applicable Documents..... 5

ARTICLE 2 - DELIVERY..... 6

 2.1. Place and Dates of Delivery 6

 In the case the Agency decides not to continue with a following phase, the Technical Data Package for the phase(s) completed shall be delivered at the same time as the relevant final documentation for such phase(s)..... 7

ARTICLE 3 - PRICE & PAYMENT..... 8

 3.1. Price..... 8

 3.2. Payment..... 9

ARTICLE 4 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE CONTRACT..... 13

ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC..... 15

 CLAUSE 2: APPROVAL AND ENTRY INTO FORCE 15

 CLAUSE 5: THE PARTIES' REPRESENTATIVES 15

 CLAUSE 9: KEY PERSONNEL..... 17

 CLAUSE 10: SUBCONTRACTS 17

 CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI) 18

 CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY 18

 CLAUSE 13: CHANGES..... 18

 CLAUSE 14 : TIME-LIMITS FOR THE PROVISION OF DELIVERABLES AND SERVICES 18

 CLAUSE 15: HANDLING, PACKING AND TRANSPORT, TRANSFER OF OWNERSHIP AND RISK..... 18

 CLAUSE 17: PENALTIES/INCENTIVES..... 19

 CLAUSE 27: PRICING..... 19

 CLAUSE 34: APPLICABLE LAW 19

 CLAUSE 35: DISPUTE RESOLUTION 19

 CLAUSE 36: GENERAL 20

 CLAUSE 37: INFORMATION TO BE PROVIDED 20

 CLAUSE 38: DISCLOSURE..... 21

 CLAUSE 41: USE OF INTELLECTUAL PROPERTY RIGHTS 21

 CLAUSE 42: SOFTWARE 22

 CLAUSE 43: BACKGROUND INTELLECTUAL PROPERTY RIGHTS 22

 CLAUSE 44: EXPLOITATION 24

Appendix 1: Payment plan and advance payment(s) and other financial conditions

Appendix 2: Statement of work

- Appendix 3: Standard requirements for management, reporting, meetings and deliverables
- Appendix 4: Inventory/fixed asset record
- Appendix 5: Contract Change Notice
- Appendix 6: Standard cover page for ESA study contract reports
- Appendix 7: List of items covered by Background Intellectual Property Rights which are proposed to be used for the present activity

ARTICLE 1 - SUBJECT OF THE CONTRACT – APPLICABLE DOCUMENTS**1.1. Subject of the Contract**

The Contractor, as further described in the Statement of Work in Appendix 2 hereto, undertakes to carry out the design, development, manufacturing and testing of demonstrator model for the ATHENA – Magnetic Diverter; to deliver the hardware, computer models and data, and documentation as described herein and to make an oral presentation of the results.

1.1.1 The work shall be performed in two Phases (hereafter “Phase” or “Phases”) as defined in Appendix 2 hereto.

The Agency reserves the right not to proceed further with the work at the end of Phase 1. A decision by the Agency not to continue further with the work at the end of Phase 1 does not lead to the application of Clause 31 of the GCC.

1.1.2 The decision whether to proceed further or not shall be taken after completion of Phase 1 and after acceptance, by the Agency, of the deliverables due, under such Phase.

The Contractor shall start Phase 2 only upon receipt of written notification from the Agency’s representatives nominated in Article 5, Clause 5, Sub-Clause 5.1, of the relevant authorisation to proceed with Phase 2.

1.2. Applicable Documents

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

- a) The Articles of this Contract and its Appendix 1 (Payment Plan Advance Payment(s) and other Financial Conditions);
- b) The General Clauses and Conditions for ESA Contracts (herein referred to as GCC), ref. ESA/REG/002, rev. 2, not attached hereto but known to both Parties and available on <http://emits.sso.esa.int/emits/owa/emits.main> – “reference documentation” – “administrative documents”, as amended by this Contract.
- c) Appendix 2 hereto: The Statement of Work, reference ESA-SCI-F-ESTEC-SOW-2017-005, issue 1, revision 0, dated 15/06/2017;
- d) Appendix 3 hereto: The Standard Requirements for Management, Reporting, Meetings and Deliverables (rev 3: 2015-11) and its Annex A: Layout for Contract Closure Documentation (in its latest version);
- e) The Minutes of the negotiation meeting held on ref.; not attached hereto but known to both parties.

ARTICLE 2 - DELIVERY**2.1. Place and Dates of Delivery****2.1.1 Documents**

The Contractor shall, during the performance of this Contract, deliver all documentation and reports specified in Appendix 2 hereto, in the required number of paper copies and electronic files. These shall be sent to the Agency's Technical Officer mentioned in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, unless otherwise specified, in accordance with the following specific provisions:

PHASE 1

2.1.1.1 The draft Phase 1 Final Report, shall be submitted for approval, in electronic format (pdf to be unlocked and searchable), to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than [... **DATE TO BE FILLED IN**].

The final version of the Phase 1 Final Report shall be issued in one (1) paper copy and an electronic file, not later than four (4) weeks after the Agency's approval of the draft version.

PHASE 2

2.1.1.2 The draft versions of the Final Report and Executive Summary Report as defined in Appendix 2 hereto, shall be submitted for approval, in electronic format (pdf to be unlocked and searchable), to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than [... **DATE TO BE FILLED IN**].

2.1.1.3 The finalised versions of the such final documents shall be issued not later than four (4) weeks after the approval of the draft versions, as follows:

- in one (1) bound paper copy and in two (2) copies on USB memory stick to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract; and
- in one (1) paper copy and one (1) copy on USB memory stick to the ESA Information and Documentation Centre – ESTEC library, Postbus 299, 2200 AG, Noordwijk, The Netherlands.

2.1.1.4 At the same time as delivery of the final documents, the Technical Data Package, containing all approved Technical Notes, together with all other deliverable document shall be delivered in two (2) bound paper copies and two (2) copies on USB memory sticks (pdf to be unlocked and searchable) to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract.

In the case the Agency decides not to continue with a following phase, the Technical Data Package for the phase(s) completed shall be delivered at the same time as the relevant final documentation for such phase(s).

2.1.2 Computer Models and Data

The CDF, CAD and mathematical models produced under this Contract shall be delivered as an integral part of the technical documentation delivered under this Contract.

Any licences for software, mathematical models etc not produced under this Contract, but required for the Agency in order to verify and utilize any data or design delivered under this Contract must be provided with the delivery, with the exception of commercially available standard software such as Word®, Excel®, Matlab ®etc.

2.1.3 Hardware

The hardware specified in Appendix 2 shall be delivered to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than at the time of delivery of the draft Phase 1 Final Report stated in paragraph 2.1.1.1 here above for any items produced under Phase 1, and not later than the time of delivery of the draft final documentation stated in paragraph 2.1.1.2 here above for items produced under Phase 2.

2.1.4 Contract Closure documentation

The Contract Closure form (Appendix 3, Annex A) shall be delivered in one (1) set of documentation each, to the Agency's authorised representatives not later than the time of submitting the invoice(s) for the Final Settlement (see also Article 3.2.2 here below).

ARTICLE 3 - PRICE & PAYMENT

3.1. Price

The price of this Contract amounts to:

EUR
 (..... euro)

The Agency may decide that certain items produced or purchased under the Contract during its implementation (see Article 4 below) shall become ESA Fixed Assets. Such items shall be identified as Fixed Assets through the means of a Contract Change Notice.

The price of this Contract is broken down per Phase, Contractor and Subcontractor(s) as follows (all amounts in euro):

Company Name	ESA Entity Code (at contract signature)	Type P/Prime; SI/Subco Indirect	Country (ISO Code)	Phase 1	Phase 2	Total Amount

- 3.1.1 The type of price is Firm Fixed Price as defined in Section 2.1 of Annex II to the GCC for Phases 1 and 2.
- 3.1.2 The above amounts do not include any taxes or duties in the Member States of the Agency.
- 3.1.3 The price is deemed to include all applicable fees for licences to be purchased and delivered in the frame of the Contract, indicating the Agency as the end user. The price is further deemed to include any and all licence fees payable according to Clause 43.7 of the GCC.
- 3.1.4 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS® 2010, to the addressee(s) specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract. Reference to INCOTERMS® in this provision is exclusively for the purpose of price definition.

3.2. Payment

3.2.1 General provisions

The Payment Plan and other financial conditions applicable to this Contract are specified in Appendix 1 hereto.

An advance payment constitutes a debt of the Contractor to the Agency until it has been set off against subsequent milestones as shown in Appendix 1 hereto.

An advance payment shall nominally be set off against the 1st progress payment and the remaining amount, if any, against the next following milestone.

In the event that the achievement of a milestone is delayed but the milestone is partially met at the schedule date specified in Appendix 1 hereto, the Agency may as an exception, effect a payment against an approved confirmation of the partially achieved milestone, not exceeding the value of the work performed at the date of payment.

When releasing the payment for a given milestone, if applicable, the Agency's payment shall be made after due deduction of the corresponding off-set of the advance payment(s) as per the conditions of Appendix 1 hereto (Payment plan and advance payment(s) and other financial conditions).

In case of partial payment of a milestone, the Agency shall deduct from the corresponding invoice(s) any outstanding amount of the advance payment(s) still to be off-set against such milestone.

Payments shall be made within thirty (30) calendar days of receipt at ESA-ESTEC Finance, Central Invoice Registration Office of the documents specified in Article 3.2.2 below¹, and of fulfilment of the requirements specified therein. Only upon fulfilment of the said requirements shall the invoice be regarded as due by the Agency.

Payments shall be made by the Agency in euro to the account specified by the Contractor. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). The Parties agree that payments shall be considered as effected by the Agency on time if the Agency's orders of payment reach the Agency's bank within the payment period stipulated in the paragraph here above.

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

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

Any questions concerning the latest status of due invoices can be addressed to the ESA Payment Officer (mail to: esa.payment.officer@esa.int).

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

In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to the number indicated on the VAT Exemption Form which the Agency provided to the Contractor when forwarding two (2) originals of the present Contract for signature. On invoices submitted via esa-p, the number shall be put in the respective field 'VAT Exemption Number'.

3.2.2 Requirements for Advance Payment Requests (APR) and invoices being regarded as due):²

Advance Payment (*only applicable if significant need for cash disbursement at the beginning of the contract has been demonstrated*):

- APR: to be submitted after signature of this Contract by both Parties.
- APR: to be submitted after receipt of the Agency's written Authorisation to Proceed with a Phase.

Progress Payment(s):³

- Milestone Achievement Confirmation (MAC) hereinafter referred to as "confirmation" with supporting documentation, attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payments Plan specified in Appendix 1 hereto.

and

- Invoice(s);

Final Settlement:

- Confirmation, with supporting documentation attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone as defined in the Milestone Payments Plan specified in Appendix 1 hereto.

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

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

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

³ esa-p Job Aid: How to submit a Confirmation / Invoice / Advance in 6 steps (see link hereunder): <http://esa-p-help.sso.esa.int/2>

and

- Invoice(s);

and

- Receipt and/or acceptance, by the Agency, of all deliverable items, of the services to be rendered and other obligations to be fulfilled, in accordance with the terms of this Contract, including the correct marking of final deliverable documentation (see Article 5, Clause 14);
- The Contract Closure Documentation using the template provided in Annex A to Appendix 3 hereto, or any later revision available.
- In case of non-authorisation by ESA at the end of a Phase to proceed with the subsequent Phase, the last payment milestone of the last authorised Phase shall be deemed to constitute the Final Settlement of the Contract and all conditions associated to the Final Settlement shall be fulfilled for payment of such milestone.

3.2.3 Implementation of payments conditions

[OPTION 1: No Subs]

The Contractor shall ensure that all APR, invoices and confirmations are submitted for payment exclusively through the Agency's esa-p system **and that all supporting documentation demonstrating Milestone achievement etc. is attached in esa-p.**

The Contractor undertakes to adhere strictly to the instructions contained in esa-p (including those for billing taxes and duties, where applicable) when submitting APR, invoices and confirmations through the esa-p system.

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

[end OPTION 1]

[OPTION 2: If Subs]

The Contractor shall ensure that all APR, invoices and confirmations, are submitted for payment exclusively through the Agency's esa-p system **and that all supporting documentation demonstrating Milestone achievement etc. is attached in esa-p.**

The Contractor undertakes to adhere strictly to the instructions contained in esa-p (including those for billing taxes and duties, where applicable) when submitting APR, invoices and confirmations through the esa-p system.

The Agency shall credit the account of the Contractor to the Contractor's benefit and to the benefit of the Contractor's Subcontractor(s).

The Contractor shall be responsible for approving or rejecting, within ten (10) calendar days of receipt, the relevant and due invoices and supporting documentation (e.g. Confirmations) of his Subcontractor(s).

The Contractor shall furthermore be responsible for paying such due invoices into the accounts of his Subcontractor(s) for this Contract in accordance with the applicable law and normal commercial practices.

The Contractor shall indemnify the Agency against any claims arising from such Subcontractor(s), caused by the Contractor's failure to pay the Subcontractor(s). The Contractor shall supply to the Agency, upon request, evidence of payments made to his Subcontractor(s).

The Agency reserves the right to visit the Contractor's and/or Subcontractor('s)(s') premises and ascertain the progress of the work being performed under the Contract, prior to making the progress payment concerned.

The Contractor shall, upon request at any time by the Agency, submit the payment conditions / provisions of individual Sub-Contracts to the Agency for approval (if requested before the Sub-Contract is placed) or verification.

[end OPTION 2]

3.2.4 Absence of user account for esa-p:

If the Contractor has no access to the Agency's esa-p system at the time of signature of the present Contract, an immediate request for an esa-p user account shall be made by the Contractor to the ESA Helpdesk (idhelp@esa.int), specifying a contact name, the company name, and the ESA Contract number.

3.2.5 In case of esa-p not being operative:

Should the Contractor find the Agency's esa-p system technically inoperative at the moment of submission of the APR and invoice(s), the Contractor may submit invoices in paper format; two (2) copies shall be sent to the ESA Financial Operations Department of the responsible ESA establishment: ESA-ESTEC Finance, Central Invoice Registration, together with justifying documentation as required by the Contract.

Should the Contractor find the Agency's esa-p system technically inoperative at the moment of submission of the confirmation, the Contractor may submit the confirmation in paper version in three (3) copies to the Agency's Technical Officer mentioned in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract. A confirmation template can be obtained upon request to the ESA Helpdesk (idhelp@esa.int).

3.2.6 Questions related to the esa-p system:

Any questions concerning the operation of esa-p shall be addressed to the ESA Helpdesk (idhelp@esa.int).

**ARTICLE 4 - MANAGEMENT AND CONTROL OF INVENTORY
ITEMS/FIXED ASSETS UNDER THE CONTRACT**

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

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

- i. items produced or purchased under the Contract, including electronic components, special jigs, tools, test equipment, and which are paid for under the Contract with an individual or batch value (value of group of items) equivalent to, or above, EUR 5,000;
- ii. if any, items identified as becoming ESA Fixed Assets in Article 3.1 above or in a subsequent CCN to this Contract;
- iii. if any, Customer Furnished Items (see Article 5, Clause 11 of the Contract) and/or Items made available by the Agency (see Article 5, Clause 12 of the Contract).

4.2 The Contractor shall operate an Inventory Control System of all above mentioned items and shall mark them as falling under this Article of the Contract.

The Inventory Control System shall :

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

The Contractor shall, as part of the Inventory Control System, maintain an Inventory/Fixed Asset Record (in an electronic tool of his choice) which shall, as a minimum, contain the information as shown in Appendix 4 to this Contract.

The Inventory/Fixed Asset Record shall be kept up-to-date by the Contractor. It shall be made available to the Agency upon request and as a minimum once a year during the execution of the Contract (and at the completion of each Project Phase as per ECSS-M-ST-10 if applicable). A final consolidated Record shall be submitted with the final contractual deliverables as foreseen in Appendix 4 to this Contract.

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

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

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

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

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

The decisions taken by the Agency shall lead to instructions or negotiations, as the case may be and the results shall be recorded in the relevant sections of the Contract Closure Documentation (CCD) as found in Annex A to Appendix 3 of the Contract. The CCD shall not be finalised and signed before a disposition of all items has been given by the Agency and recorded in the documentation.

ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC

The General Clauses and Conditions for ESA contracts, ref. ESA/REG/002, rev. 2 (GCC) apply to this Contract with the following complements and amendments.

PART I: CONDITIONS APPLICABLE TO ESA CONTRACTS

CLAUSE 2: APPROVAL AND ENTRY INTO FORCE

For the purpose of this Contract the authorised representative of the Director General is:

Mr. Frederic Safa
 Head of Future Missions Department
 Directorate of Science

CLAUSE 5: THE PARTIES' REPRESENTATIVES

Sub-clause 5.1 The Agency's representatives

The Agency's representatives are:

- a) Mr/Ms.....for technical matters or a person duly authorised by him/her. ("Technical Officer").

All correspondence for technical matters shall be addressed to:

	To:	With copy to:
Name		
Phone	+ 31 71 565	+ 31 71 565
Fax	+ 31 71 565	+ 31 71 565
e-mail	@esa.int	@esa.int
Mail Address	ESA/ESTEC Keplerlaan 1, 2201 AZ Noordwijk ZH, The Netherlands	ESA/ESTEC Keplerlaan 1, 2201 AZ Noordwijk ZH, The Netherlands

- b) Ms. Beatrice Weihert (IPL-PSS) for contractual and administrative matters or a person duly authorised by her. ("Contract Officer").

All correspondence for contractual and administrative matters (with exception of invoices as mentioned in Article 3.2) shall be addressed to:

	To:	With copy to:	
Name	Ms. Beatrice Weihert		
Phone	+31-71-565	+ 31 71 565	+ 31 71 565
Fax	+31-71-565 5662	+ 31 71 565	+ 31 71 565
e-mail	Beatrice.Weihert@esa.i	@esa.int	@esa.int
Mail Address	ESA/ESTEC Keplerlaan 1 2201 AZ Noordwijk ZH The Netherlands	ESA/ESTEC Keplerlaan 1 2201 AZ Noordwijk ZH The Netherlands	ESA/ESTEC Keplerlaan 1 2201 AZ Noordwijk ZH The Netherlands

Sub-clause 5.2 The Contractor’s representatives

The Contractor’s representatives are:

- a) Mr/Ms.....for technical matters or a person duly authorised by him/her. (“Technical Officer”).

All correspondence for technical matters will be addressed to:

	To:	With copy to:
Name		
Phone		
Fax		
e-mail		
Mail Address		

- b) Mr/Msfor contractual and administrative matters or a person duly authorised by him/her. (“Contract Officer”).

All correspondence for contractual and administrative matters will be addressed to:

	To:	With copy to:
Name		
Phone		
Fax		
e-mail		
Mail Address		

CLAUSE 9: KEY PERSONNEL

The Contractor's key personnel are as stated in the Minutes of the negotiation meeting referred to in Article 1.2 above.

CLAUSE 10: SUBCONTRACTS

OPTION 1: No Sub-Contracts are foreseen.

OPTION 2: Part of the work is to be sub-contracted to the Subcontractors listed in Article 3.1 above.

In relation to Article 3.2.3 above, the following provisions are added:

The Contractor shall ensure that provisions A) and B) hereunder are duly reflected in all subcontracts entered into for the purpose of this Contract. It is explicitly understood that the communication channel described below shall not replace the normal communication lines within the consortium, and the overall responsibility of the Contractor to ensure the proper and timely conclusion of contracts and payments throughout the consortium:

- A) With a view to optimise Subcontractors' time to payment and financial coverage, and to facilitate, when needed, the resolution of any issues in these areas, the Agency has established a dedicated centralised email address.

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

- (i) timely payment of due invoices (i.e. related to a milestone already achieved) to be made by the Subcontractor's direct customer (i.e. not ESA),
- (ii) contractual coverage of activities already kicked-off,

the said Subcontractor may directly contact the Agency at: indirectpayments@esa.int

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

In doing so, such Subcontractor shall attach the Standard Contact Form available at: <http://emits.sso.esa.int/emits-doc/ESTEC/Indirect-Payments-Query-Form.docx> 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 includes a 35% Advance Payment.

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

CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)

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

CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY

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

CLAUSE 13: CHANGES

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

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

The Contractor may mark the deliverables documents with the following :

“ © [COMPANY NAME] [YEAR OF PUBLICATION]

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

This document may only be reproduced in whole or in part, or stored in a retrieval system, or transmitted in any form, or by any means electronic, mechanical, photocopying or otherwise, either with the prior permission of [COMPANY NAME] or in accordance with the terms of ESA Contract No. 4000xxxxxx/XX/XX/xx.”

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

The following provisions are added to Clause 15 of the GCC:

Sub-Clause 15.3.6:

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

CLAUSE 17: PENALTIES/INCENTIVES

Penalties for late delivery shall not apply; neither to this Contract, nor to any related subcontract(s) that may be placed by the Contractor.

CLAUSE 27: PRICING

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

CLAUSE 34: APPLICABLE LAW

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

CLAUSE 35: DISPUTE RESOLUTION

The arbitration proceedings referred to in Clause 35 of the GCC shall take place in (town, country)

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

For the purpose of this Contract:

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

The following provisions are added:

CLAUSE 36: GENERAL

The following provisions are added to Sub-Clause 36.2 of the GCC:

The term “documentation” as defined in Annex IV to the GCC shall be interpreted to also include data files, CAD files, EXCEL® files and similar electronic files, which shall not be considered as “software” in the sense of Clause 42 of the GCC.

The electronic files containing these items shall be delivered to the Agency in the format agreed with the ESA Technical Officer.

CLAUSE 37: INFORMATION TO BE PROVIDED

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

The Contractor shall not mark any documents as “Proprietary Information” unless agreed in advance with the Agency. Any request from the Contractor shall be submitted accompanied by an appropriate justification.

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

- a) The Agency shall have the right to disclose, at any time including throughout the duration of this Contract, any information generated in the frame of this Contract, to any Agency Contractor or Sub-Contractor performing work for the Agency’s Own Requirements.

The Contractor’s documents containing Background Intellectual Property, if any, specified in Clause 43 below constitute an exception to the ESA right of dissemination to the former paragraph above. ESA shall use and disseminate documents containing Contractor’s Background Intellectual Property only according to Clause 43 of the GCC.

b) If approved by the Member/Participating States, the Agency's right of dissemination detailed under a) here above, is also extended to non-Member States and to individuals, companies, bodies or organisations, residing in non-Member States, collaborating or participating in official activities or programmes of the Agency, provided that the information concerned is exclusively used for the purpose of the Agency's Science Programme.

CLAUSE 38: DISCLOSURE

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

Sub-Clause 38.1

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

Sub-Clause 38.2:

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

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

CLAUSE 41: USE OF INTELLECTUAL PROPERTY RIGHTS

Sub-clause 41.1(a) shall be implemented as follows:

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

CLAUSE 42: SOFTWARE

The following provisions are added to Clause 42.1:

1. In respect of any software developed wholly or primarily under this Contract, the Contractor hereby grants to the Agency and the Member States a free of charge, non- exclusive, irrevocable license, to use, copy and modify the deliverable Software for their own requirements in the field of space activities, research and technology and their space applications as defined in the GCC. In addition, the Contractor hereby grants to the Agency and the Member States the right to further grant royalty free sub-licenses of the Object Code of the Software without any restriction and sub-licenses of the Source Code of the Software under confidentiality terms for the above purposes to third parties residing within the territory of the Member States. This right shall apply to the Agency's Science Programme. A copy of the modified Software, if any, shall be available free of charge to the Contractor.
2. In respect of any commercially available software, or software developed by the Contractor outside the scope of an ESA Contract, which has been utilized by the Contractor during the work under this Contract, a user licence shall be provided to the Agency by the Contractor in order to ensure proper execution of the Agency Project. Excepted from this is commercially available standard software such as Word®, Excel®, Matlab® etc.

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

CLAUSE 43: BACKGROUND INTELLECTUAL PROPERTY RIGHTS

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

OPTION:

- a) *The Agency, on the basis of evidence provided by the Contractor, recognises the items listed in Appendix 7 hereto, expected to be provided by the Contractor, as items covered by Background Intellectual Property Rights.*

OPTION:

- a) *It is recognized by the Parties that the Contractor does not foresee to make use of any Background Intellectual Property for the work under this Contract. If the Contractor has not identified Background Intellectual Property Rights by the end of the Contract, all Intellectual property Rights used during the execution of the Contract are treated as arising from work performed under the Contract, unless and until the Contractor provides the Agency with evidence of the relevant Background Intellectual Property Rights.*

- b) Notwithstanding the above, in the event that the Contractor, after the signature of the Contract, invokes the existence of any *additional* Background Intellectual Property to be used for the purposes of the present Contract, the Contractor shall provide conclusive evidence to the Agency of the existence of this Background Intellectual Property and shall justify the reasons for which the existence of this Background Intellectual Property was not invoked before the Contract signature.

If conclusive evidence and appropriate justification are provided by the Contractor for such additional Background Intellectual Property, the Parties shall formalise a Contract Change Notice to specify in detail which Information has been recognised as Background Intellectual Property.

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

OPTION:

- c) *Information containing elements of the Background Intellectual Property listed in Appendix 7 hereto shall be included in the relevant deliverable Documentation. The Contractor shall deliver such Documentation in two versions:*

- i) *one version not containing any Proprietary Background Information, which is not marked as such and which can be disseminated by the Agency according to this Contract, not being subject to the protection of Clause 38 of the GCC;*

and

- ii) *one version containing the Proprietary Background Information and which is signed on every page with the notice "Background Intellectual Property – Proprietary Information". This version of the Documentation shall be protected under Clause 38 of the GCC as amended. In addition, this version may be used, modified or maintained by other entity(ies) or person(s) provided that those entity(ies) or person(s) have signed a Non-Disclosure Agreement with the Contractor. The Agency shall not disclose this version of the Documentation to outside entity(s) or person(s) before these have signed a Non-Disclosure Agreement with the Contractor.*

If, by the end of the Contract, the Contractor has not identified the effective use of Background Intellectual Property Rights, all Intellectual Property Rights used during the execution of the Contract shall be deemed as arising from work performed under the Contract, unless and until the Contractor provides the Agency with evidence of the relevant use of Background Intellectual Property rights.

- d) *Pursuant to sub-clause 43.4, the Contractor shall grant the Agency a licence in accordance with the provisions stipulated in such sub-clause, for the items which are recognized by both parties as being subject to the Contractor's Background Intellectual Property Rights, and which are deemed necessary by the Agency for the purpose of the Agency Project, including the right to grant sub-licences, monitoring and verification of the performance of the work under this Contract as well as operation, preparation and execution of the Agency Project.*
- e) *Sub clause 43.5 shall be implemented as follows:*
- The Contractor shall make available to the Agency the Source Code of the items recognized as Proprietary Background listed in Appendix 7 hereto, together with all information, data and Documentation, for the Agency's Science Programme with the exceptions, if any, indicated in the said Appendix 7.*
- For the Agency's Own Requirements other than for the Agency Project, reference is made to Clause 43.4 in fine.*
- f) For the purpose of Clauses 43.4 and 43.7, the term "Agency Project" shall refer to the Agency's Science Programme.

CLAUSE 44: EXPLOITATION

The following is added to Clause 44:

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

Done in two originals, one for each Party to this Contract,

In:

In Noordwijk, The Netherlands

On:

On:

For the Contractor

For the European Space Agency (ESA)

Mr. Frederic Safa
Head of Future Missions Department
Directorate of Science

APPENDIX 1: PAYMENT PLAN AND ADVANCE PAYMENT(S) AND OTHER FINANCIAL CONDITIONS

All amounts below are in Euros

Milestone (MS) Description	Schedule Date	Payments from ESA to Prime Contractor
PHASE 1		
MS 1-1) Progress Payment: Upon successful completion of and acceptance by the Agency of all related deliverables		
MS 1-2) Final Settlement: Upon the Agency’s acceptance of all deliverable items due under Phase 1 and the Contractor’s fulfilment of all other contractual obligations including submission of the Contract Closure Documentation in the event of no authorisation to proceed is given for Phase 2		
TOTAL:		

Advance Payment(s) and other Financial Conditions for Phase 1:

All amounts below are in euros

Prime (P)/ SI/Subco Indirect	Company Name	ESA Entity Code <small>(at contract signature)</small>	Advance Payment Euro	Offset again st	Offset by	Condition
P				MS 1-1	Amount	Upon signature of the Contract by both Parties
SI				MS 1-1	Amount	Upon signature of the Contract by both Parties

Milestone (MS) Description	Schedule Date	Payments from ESA to Prime Contractor
PHASE 2		
MS 2-1) Progress Payment: Upon successful completion of and acceptance by the Agency of all related deliverables		
MS 2-2) Final Settlement: Upon the Agency’s acceptance of all deliverable items due under Phase 2 and the Contractor’s fulfilment of all other contractual obligations including submission of the Contract Closure Documentation		
TOTAL:		
TOTAL FOR PHASE 1 AND PHASE 2 TOGETHER:		

Advance Payment(s) and other Financial Conditions for Phase 2:

All amounts below are in euros

Prime (P)/ SI/Subco Indirect	Company Name	ESA Entity Code (at contract signature)	Advance Payment Euro	Offset against	Offset by	Condition
P			Amount	MS 2-1	Amount	Upon the Agency's written authorisation to proceed with Phase 2
SI			Amount	MS 2-1	Amount	Upon the Agency's written authorisation to proceed with Phase 2

ANNEX 1 TO APPENDIX 1: Information on split of payments within consortium

All amounts below are in Euros

Milestone (MS) Description	Schedule Date	FOR INFORMATION ONLY: Share of payment for Prime Contractor and Subcontractor(s)				
		Prime Contractor	Sub-contractor ...	Sub-contractor ...	Sub-contractor ...	TOTAL
PHASE 1						
MS 1-1) Progress Payment: Upon successful completion of and acceptance by the Agency of all related deliverables						
MS 1-2) Final Settlement: Upon the Agency's acceptance of all deliverable items due under Phase 1 and the Contractor's fulfilment of all other contractual obligations including submission of the Contract Closure Documentation in the event of no authorisation to proceed is given for Phase 2						
TOTAL:						

Milestone (MS) Description	Schedule Date	FOR INFORMATION ONLY: Share of payment for Contractor and Subcontractor(s)				
		Prime Contractor	Sub-contractor ...	Sub-contractor ...	Sub-contractor ...	TOTAL
MS 2-1) Progress Payment: Upon successful completion of and acceptance by the Agency of all related deliverables						
MS 2-2) Final Settlement: Upon the Agency's acceptance of all deliverable items due under Phase 2 and the Contractor's fulfilment of all other contractual obligations including submission of the Contract Closure Documentation						
TOTAL:						
TOTAL FOR PHASE 1 AND PHASE 2 TOGETHER:						

APPENDIX 2: STATEMENT OF WORK

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

(Core text Rev 3: 2015-11)

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

1. MANAGEMENT

1.1. General

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

1.2. Access

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

2. REPORTING

2.1. Minutes of Meeting

- a) The Contractor is responsible for the preparation and distribution of minutes of meetings (see ECSS-M-ST-10C Rev. 1 section 5.2.2 for more details) held in connection with the Contract. Electronic and paper versions shall be issued and distributed to all participants, to the Agency's technical representative (4 copies) and to the ESA Contracts Officer (1 copy), not later than ten (10) days after the meeting concerned.

- b) The minutes shall clearly identify all agreements made and actions accepted at the meeting together with an update of the Action Item List (AIL) and the Document List. The minutes shall be signed.

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

2.2. Documents List

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

2.3. Action Item List (AIL)

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

2.4. Bar-Chart Schedule

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

2.5. Risk Register

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

2.6. Progress Reports

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

- a.1 action items completed during the reporting period
- a.2 a status report on all long lead or critical delivery items
- a.3 a description of progress: actual vs. schedule, milestones and events accomplished
- a.4 reasons for slippages and/or problem areas, if any, and corrective actions planned and/or taken, with revised completion date per activity
- a.5 events anticipated during the next reporting period (e.g. milestones reached)
- a.6 expected date for major schedule items
- a.7 milestone payment status
- a.8 status of risks.

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

2.7. Inventory/Fixed Asset Record

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

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

2.8. Problem Notification

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

2.9. Technical Documentation

- a) As they become available and not later than the dates in the delivery plan, the Contractor shall submit, for the Agency's approval, technical notes, engineering drawings, manufacturing plans, test plans, test procedures, specifications and Task/WP reports.
- b) Technical documentation to be discussed at a meeting with the Agency shall be submitted two (2) weeks prior to the meeting.

- c) Technical documents from Subcontractors shall be submitted to the Agency only after review and acceptance by the Contractor and shall be passed to the Agency via the Contractor's formal interface to the Agency.
- d) Tests carried out under the Contract shall be performed according to test plans and test procedures approved by the Agency's Technical Officer (see ECSS-E–ST-10-02C and ECSS-Q-20C Rev.1 for more details).

3. MEETINGS

- a) The kick-off meeting shall take place at the Agency's premises.
- b) Progress meetings shall be held at approximately 2- to 3-monthly intervals, alternating between Agency premises and Contractor premises.
- c) The final presentation shall take place at the Agency's premises.
- d) Additional meetings may be requested either by the Agency or the Contractor.
- e) The Contractor shall give to the Agency prior notice of any meetings with Third Parties to be held in connection with the Contract. The Agency reserves the right of participation in such meetings.
- f) With due notice to the Contractor the Agency reserves the right to invite Third Parties to meetings to facilitate information exchange.
- g) For all meetings with the Agency, the Contractor shall ensure that proper notice is given at least two (2) weeks in advance. For all other meetings, the Contractor shall inform the Agency, which reserves the right to participate. The Contractor is responsible for ensuring the participation of his personnel and those of the Subcontractor(s), as needed.
- h) For each meeting the Contractor shall propose an agenda in electronic form and shall compile and distribute handouts of any presentation given at the meeting.

4. DELIVERABLES

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

4.1. Documentation

- a) In addition to the documents to be delivered according to section 2 here above, the following documentation shall also be deliverable. In the case of

alternative choices herein, the Statement of Work specifies which ones are applicable.

- b) All documentation deliverables mentioned hereunder (including all their constituent parts) shall also be delivered in electronic form in a format agreed by the Agency (PDF format and the native format, and in other exchange formats where relevant (e.g. CAD, drawings, databases)).
- c) All the documentation shall be delivered on computer readable media (e.g. CD-ROM, DVD-ROM) as agreed by the Agency with an additional two (2) paper copies.
- d) The draft version of the documentation shall be sent to the Technical Officer in three (3) copies not later than two (2) weeks before the documentation is to be presented. The final version shall be provided in a number of copies specified in the Statement of Work.

4.1.1. Final Report

- a) The Final Report shall provide a complete description of all the work done during the activity and shall be self-standing, not requiring to be read in conjunction with reports previously issued. It shall cover the whole scope of the activity, i.e. a comprehensive introduction of the context, a description of the programme of work and report on the activities performed and the main results achieved.
- b) For phased contracts, a Final Report shall be produced at the end of each Phase in accordance with the above definition, describing the work and results of that Phase and previous Phases. It becomes the Final Report in case the Agency decides not to proceed with the subsequent Phase(s).

4.1.2. Technical Data Package

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

4.1.3. Summary Report

For each (design and development) contract, one Summary Report shall be produced. It shall summarise the findings of the Contract concisely and, informatively. The Summary Report shall be approximately 20 pages or 6000 words.

NOTE:

The Agency may request the Contractor to produce the Summary Report in the form of a paper suitable for publishing in a technical journal.

4.1.4. Executive Summary Report

The Executive Summary Report shall concisely summarise the findings of the Contract. It shall be suitable for non-experts in the field and should also be appropriate for publication. For this reason, it shall not exceed five (5) pages of text and ten (10) pages in total (1500 to 3000 words).

4.1.5. Abstract

Each (study) contract shall also be completed with an Abstract, summarising the work performed. It shall be suitable for application at symposiums or technical journals, normally not exceeding three (3) to four (4) pages of text with coloured illustrations or photographs where appropriate.

4.1.6. Brochure

A Brochure is intended for marketing purposes. It shall be concise and it shall include a short description of the work performed and applications of the development, a photograph or functional drawing if applicable, technical fact sheet, estimate of availability (delivery time) and a contact point for marketing purposes.

It shall contain one (1) or two (2) pages of text (i.e. up to about 700 words).

4.1.7. Photographic Documentation

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

4.1.8. Contract Closure Documentation

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

4.2. Hardware

Hardware (incl. test equipment and control electronics) built or purchased under the Contract, together with an Operation Manual, shall be a deliverable item after

completion of the associated activities at the Contractor's premises, unless otherwise agreed in writing by the Agency.

4.3. Computer Programs and Models

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

4.4. Project Web Page

The Contractor shall produce a Project Web Page which shall be suitable for public internet access.

5. COMMERCIAL EVALUATION (SPACE MARKET)

The Commercial Evaluation is a report containing an analysis and evaluation of the potential in the space market of the output (products) of the Contract.

The report shall identify the maturity of the output of the subject activity with respect to the market and, if applicable, describe the required additional work and the level of funding required for the product to reach a marketable level.

Annex:

Annex A: Layout for Contract Closure Documentation (in its latest version, the version reference can be different from the revision reference of the Appendix 3 core text)

**ANNEX A: LAYOUT FOR CONTRACT CLOSURE DOCUMENTATION
 (Rev 4: 2015-11)**

for
 ESA Contract No. [INSERT NUMBER]
 “[INSERT ACTIVITY TITLE]”,
 hereinafter referred as the “Contract”

Section 1 – Parties, Contract Duration and Financial Information

Contractor	[CONTRACTOR NAME AND COUNTRY]		
Sub-Contractor(s) <i>(state if not applicable)</i>	[NAME AND COUNTRY]		
Contract Duration	From: To:	Phase 1	from: to:
		Phase 2	from: to:
Total Contract Price <i>(including all CCNs, Work Orders, Call of Orders)</i>		EUR	
and Total Contract Value <i>(in case of co-funding; state if not applicable)</i>		EUR	
Broken down as follows:	Original Contract Price	XXX EUR (XXX EUR)	
	and original Contract Value <i>(in case of co-funding; state if not applicable)</i>	EUR	
	CCN x to n	EUR	in total
	Work Order x to n	EUR	in total
	Call-Off Order x to n	EUR	in total

Section 2 – Recapitulation of Deliverable Items

2.1 Items deliverable under the Contract

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

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

Type	Ref. No.	Name / Title	Description	Replacement Value (EUR)/ Other	Location (1)	Property of	Rights granted / Specific IPR Conditions (2)
Documentation							
Hardware							
Software			<i>(Delivery in Object code / Source code?)</i>				
Other							

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

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

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

The Contractor, after agreement with the Agency with respect to the disposal/transfer of inventory items/fixed assets under the contract, shall submit the Inventory/Fixed Asset Record as attachment to the CCD. For each item/fixed asset, the information as requested by Appendix 4 to the Contract shall be provided in the Record.

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

[Option 1]

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

[Option 2]

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

Customer Furnished Items

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

Items made available by the Agency

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

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

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

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

Section 3 – Statement on Intellectual Property Rights generated under the contract

[OPTION 1 : NO Intellectual Property Rights generated under the Contract]
 In accordance with the provisions of the above Contract [*insert Contract Number*], [*insert Company name*] hereby certifies both on its own behalf and on behalf of its consortium/Sub-Contractor(s), that no Intellectual Property Rights (as defined in Annex IV of the General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002, Rev. 2 ,the “GCC”) have been generated in the course of or resulting from work undertaken for the purpose of this Contract. **[END OF OPTION 1]**

[OPTION 2 : Intellectual Property Rights generated under the Contract]
 The Agency’s rights in the Intellectual Property Rights listed in the table below shall be in accordance with the General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002, Rev. 2, the “GCC” - Part II provisions, as amended by the Contract [*insert Contract Number*].

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

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

Intellectual Property Rights (“IPR”) suitable for registration (i.e. “Registered Intellectual Property Rights” as per definition in Annex IV of the “GCC”)	Current status <i>[delete non applicable options]</i>
<i>[insert title of IPR # 1 and give a short description]</i>	Registered : <i>[insert information on registration granted]</i> In the process of being registered: <i>[insert information on registration process]</i> Foreseen for registration: <i>[indicate timeline]</i> Not foreseen for registration: <i>[indicate reason]</i>
<i>[insert title of IPR # 2 and give a short description]</i>	Registered : <i>[insert information on registration granted]</i> In the process of being registered: <i>[insert information on registration process]</i> Foreseen for registration: <i>[indicate timeline]</i> Not foreseen for registration: <i>[indicate reason]</i>
Should any Intellectual Property Rights be indicated as being foreseen for registration or in the process of registration, the Contractor undertakes to notify the Agency's Technical Officer when: <ul style="list-style-type: none"> - registration of any such IPR(s) is rejected - registration of any such IPR(s) is obtained (and will provide the registration details) 	
Intellectual Property Rights ("IPR") not suitable for registration (i.e. not being "Registered Intellectual Property Rights" as per definition in Annex IV of the "GCC")	
<i>[insert title of corresponding IPR]</i>	<i>[give a short description of such IPR]</i>
<i>[insert title of corresponding IPR]</i>	<i>[give a short description of such IPR]</i>

Section 4 – Output from / Achievements under the Contract

4.1. Technology Readiness Level (TRL)

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

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

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

4.2. Achievements and Technology Domain

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

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

1	On-Board Data Systems	14	Life & Physical Sciences
2	Space System Software	15	Mechanisms & Tribology
3	Spacecraft Electrical Power	16	Optics
4	Spacecraft Environment & Effects	17	Optoelectronics
5	Space System Control	18	Aerothermodynamics
6	RF Payload and Systems	19	Propulsion
7	Electromagnetic Technologies and	20	Structures & Pyrotechnics

	Techniques		
8	System Design & Verification	21	Thermal
9	Mission Operations and Ground Data Systems	22	Environmental Control Life Support
10	Flight Dynamics and GNSS	23	EEE Components and Quality
11	Space Debris	24	Materials and Processes
12	Ground Station System & Networking	25	Quality, Dependability and Safety
13	Automation, Telepresence & Robotics		

4.3 Application of the Output/ Achievements

Please tick off as appropriate:

Possible use in programme:

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

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

Actual use in programme:

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

4.4 Further Steps/Expected Duration

Please tick off as appropriate:

No further development envisaged.

Further development needed:

.....

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

4.5 Potential Non-Space Applications

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

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

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

APPENDIX 4: INVENTORY/FIXED ASSET RECORD

1.1. Content of Electronic Inventory/Fixed Asset Record

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

For all items:

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

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

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

- foreseen handling after ESA acceptance (e.g. transfer to ESA, continuing in custody of the Contractor)

1.2. Classification of Inventory/ Fixed Assets items

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

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

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

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

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

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

APPENDIX 5: CONTRACT CHANGE NOTICE

For submission of a change as per Clause 13 of the General Conditions, the Contractor shall submit his proposal in the format of a CCN using the cover page included below. The form shall be filled with the following information as a minimum:

- The Contractor's name and the Contract number
- The title of the area affected by the change (Work Package reference, new work, etc.)
- The name of the initiator of the change (Contractor or ESA)
- The description of the change (including Work Package Descriptions, WBS, etc.)
- The reason for the change
- The price breakdown in €, 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: SRE	Contractor:	
		Contract No.:	
CONTRACT CHANGE NOTICE No.		DATE:	
TITLE OF AREA AFFECTED (WORK PACKAGE ETC):		WP REF:	
RECOMMENDED CLASS (A or B):		INITIATOR OF CHANGE:	
DESCRIPTION OF CHANGE			
REASON FOR CHANGE			
PRICE BREAKDOWN (Currency)/PRICE-LEVEL / MILESTONE PAYMENT PLAN			
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:	

APPENDIX 6: STANDARD COVER PAGE FOR ESA STUDY CONTRACT REPORTS

ESA STUDY CONTRACT REPORT		
No ESA Study Contract Report will be accepted unless this sheet is inserted at the beginning of each volume of the Report.		
ESA Contract No:	SUBJECT:	CONTRACTOR:
* ESA CR()No:	No. of Volumes:.... This is Volume No:....	CONTRACTOR'S REFERENCE:
ABSTRACT:		
The work described in this report was done under ESA Contract. Responsibility for the contents resides in the author or organisation that prepared it.		
Names of authors:		
** NAME OF ESA STUDY MANAGER:	** ESA BUDGET HEADING:	
DIV: DIRECTORATE:		

- * Sections to be completed by ESA
- ** Information to be provided by ESA Study Manager

PLEASE ALSO REFER TO THE "SPECIFICATION FOR THE PRODUCTION OF
 ESA STUDY CONTRACT REPORTS » WHICH SHALL APPLY, AND CAN BE
 FOUND AT :

<http://emits.esa.int/emits/owa/emits.main>

APPENDIX 7: LIST OF ITEMS COVERED BY BACKGROUND INTELLECTUAL PROPERTY RIGHTS (BIPR) WHICH ARE PROPOSED TO BE USED FOR THE PRESENT ACTIVITY

Exact name of BIPR Item	Owner	Description	Patent # or Ref./Issue/Revision/Version #	Details on the funding of the development of the BIPR item (ESA or other contract, internal R&D etc.)	Date of completion of the version of the BIPR item listed here	Deliverables including elements of BIPR item / Deliverables generated with the use of BIPR item [with comments]

(* If ESA Contract pls mention it. IPR will then not be qualified as BIPR and follow the regime of the very contract