



ESA Contract No. 4000xxxxxx/17/XX/XX

with

[Contractor]

**[SOFTWARE DEFINE RADIO (SDR) 'MAKERSPACE' FOR
SATELLITE COMMUNICATION]**



DRAFT CONTRACT

Between:

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

having its seat at: 8-10, rue Mario Nikis, Paris, France,
represented by its Director General, Mr Johann-Dietrich Wörner,

acting through its centre:

The European Centre for Space Applications and Telecommunications (ECSAT)

located at: Fermi Avenue,
Harwell Campus,
OX11 0FD Didcot,
United Kingdom,

of the one part,

and:

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

whose Registered Office is at:

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

represented by its, Ms/Mr,

of the other part,

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



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DEFINITIONS

- “Advance Payment”** means a payment foreseen in the Contract intended to provide the Contractor with liquidity to allow the initiation of the contractual works.
- “Agency’s Own Requirements”** means the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1(a) and (b) of the European Space Agency Convention.
- “Day”** means calendar day.
- “Intellectual Property Rights”** means all Registered Intellectual Property Rights, and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world.
- “Legitimate Commercial Interests”** means an interest the Contractor can demonstrate which is important to its ability to commercially exploit Intellectual Property Rights arising from work performed under the Contract for a defined period of time which includes but is not limited to an economic position vis-à-vis a competitor, loss of profits or survival of an undertaking.
- “Member State”** means a State which is Party to the Convention of the European Space Agency in accordance with Articles XX and XXII of the said Convention.
- “Participating States”** means a Member or non-Member State participating in a given Agency programme

according to Article V.1 (a) and (b) of the European Space Agency Convention.

“Participating State’s Own Public Requirements”

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

“Persons and Bodies”

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

“Progress Payment”

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

“Registered Intellectual Property Rights”

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

“Subcontractor”

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

“Third Party”

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

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

- 1.1. The Contractor undertakes to develop the activities to enabling rapid and responsive prototyping of innovative low-cost satellite communications terminal and system concepts using SDR (all hereafter referred to as “the Work”) and to deliver all the items listed in Article 2 of this Contract.
- 1.2. The Work shall be performed in accordance with the provisions stated in the following documents, listed in order of precedence in case of conflict:
 - a) The specific Articles of this Contract;
 - b) Appendix 1 hereto: the Agency’s Statement of Work, reference 6B.042, issue 1;
 - c) The signed Minutes of the Negotiation Meeting held on ..., reference ..., issue ..., revision ..., dated ..., not attached hereto but known to both Parties;
 - d) The Contractor’s Proposal, reference ..., issue ..., revision ..., dated ..., not attached hereto but known to both Parties.

1.3 General Terms of Execution

1.3.1. The Contractor’s own sales conditions shall not apply.

1.3.2. The language of this Contract and of all communications hereunder shall be English. The substantive Law according to which this Contract shall be construed is [.....].

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 or three arbitrators designated in conformity with such Rules.

The Arbitration Tribunal shall sit in [City, Country]. The Tribunal’s award shall be final, binding on the Parties and no appeal shall lie against it. The enforcement of the award shall be governed by the rules of procedure in force in the state/country in which the award is to be executed.

1.3.4. The Contractor shall be fully responsible towards the Agency for the proper execution of the Work, including any Subcontract agreed hereunder. Subcontracts other than those specified in Article 3.1 below are expressly excluded.

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

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

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

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

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

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

In doing so, such Subcontractor shall attach the Standard Contact Form available at:

<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 foresees an automatic grant of a 35% Advance Payment.

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

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

ARTICLE 2 - DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY

2.1. General

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

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

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

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

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

2.2. Acceptance and Rejection

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

2.3. Deliverable Documents

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

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

2.3.1 The draft versions of the final documents as defined in Appendix 1 shall be submitted for approval, in electronic format, to the Agency's Technical Officer specified herein, not later than [...].

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

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

2.4. Other Deliverables

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



ARTICLE 3 - PRICE

3.1. The total price of this Contract amounts to:

..... EUR,
 (..... Euro),

broken down per Contractor and Subcontractor(s) as follows:

Company Name	ESA Entity Code	Type P/Prime; SI/Subco Indirect	Country (ISO Code)	Total Amount in EURO

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

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

- 3.2. Any amount stated above does not include any added value taxes or import duties in the Member States of the Agency.
- 3.3. The price is stated as being “Delivery Duty Paid” (DDP) for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS® 2010, to the addressee(s) mentioned, or referred to, in Article 5 of this Contract. Reference to INCOTERMS® in this provision is exclusively for the purpose of price definition. The price furthermore includes all costs relative to the Contractor’s obligations under Article 2.1.4above.

ARTICLE 4 - PAYMENTS AND INVOICING

4.1. Payments

Payments shall be made within thirty (30) calendar days of receipt at ESA-ESTEC Finance, Central Invoice Registration Office of the required documents and fulfilment of the requirements specified in Articles 4.1.1 – 4.1.3 below¹. Only upon fulfilment of these requirements shall the Agency regard the invoice as due.

Requirements to be fulfilled:

[OPTION: ADVANCE PAYMENT]

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 Contractor to the Agency until it has been set-off against subsequent milestone(s) as shown in Article 4.2 here below.

[END OPTION]

4.1.2 Progress Payment(s)²:

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

4.1.3 Final Settlement:

- Confirmation, submitted by the Contractor with supporting documentation as necessary attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Article 4.2 here below;
- Invoice;
- Delivery and acceptance, by the Agency, of all deliverable items and fulfilment of all other obligations in accordance with the terms of this Contract;
- Signed Contract Closure Documentation using the template provided in Appendix 1, Annex A.

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

² For detailed information on how to submit and approve 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.

Payments shall be made according to the provisions hereunder:

4.1.4 The Agency shall credit the account of the Contractor to the Contractor's benefit [OPTION: if Subcontractor(s)] 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 Subcontractor(s)' invoices and related supporting documents (e.g. MACs, Cost Reports). The Contractor shall also be responsible for paying the accounts of its Subcontractor(s), for this Contract, in accordance with the applicable law and normal commercial practice. The Contractor shall indemnify the Agency against any claims arising from such Subcontractor(s), caused by the Contractor's failure to pay the Subcontractor(s). The Contractor shall supply to the Agency, upon request, evidence of payments made to its Subcontractor(s). [END OPTION]

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

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

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

4.1.7 When releasing the payment for a given milestone, if applicable, the Agency's payment shall be made after due deduction of the corresponding off-set of the Advance Payment(s) as per conditions of Article 4.2 here below.
In case of partial payment(s), the Agency shall deduct from the corresponding invoice(s) relative to the same milestone any outstanding amount of the Advance Payment(s) still to be off-set.

4.1.8 All invoices shall be submitted to the Agency in electronic form through the esa-p on-line system.

- a) The Contractor shall ensure that [the APR,] all invoices and all confirmations are submitted for payment exclusively through the Agency's esa-p system. If the Contractor has no access to the Agency's esa-p system at the time of signature of this Contract, an immediate request for an esa-p user account shall be made by the Contractor to the ESA Helpdesk (mail to: idthelp@esa.int), specifying a contact name, the company name, and the ESA Contract Number.
- b.i) Should the Contractor find the Agency's esa-p system technically inoperative at the moment of submission of the invoices, the Contractor may submit invoices in paper format in five (5) copies to the ESA-ESTEC Finance, Central

Invoice Registration Office, together with justifying documentation as required by this Contract.

- b.ii) In cases where the Agency's esa-p system is inoperative at the moment of submission of the confirmation, the Contractor may submit the confirmation in paper format in three (3) copies to the Agency's Technical Officer mentioned in Article 5.1.1 a) of this Contract. A template confirmation form can be obtained upon request to idthelp@esa.int.
- c) The Contractor undertakes to complete invoices and confirmations, and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in esa-p.

[OPTION FOR COUNTRIES USING VAT]

[SUB-OPTION1 (EU COUNTRIES EXCEPT IT, NL)]

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

[END SUB-OPTION1]

[SUB-OPTION2 (IT, NL)]

Invoices submitted by the Contractor, which are free of VAT due to the applicable national law, shall make reference to the relevant piece of national legislation as shown below:

- for Italy: Law Nr. 358 of 9/6/1977 – Gazzetta Ufficiale Numero 184 of 7/7/1977;
- for the Netherlands: Art. 32 No. 4 Uitvoeringsregeling Algemene wet inzake rijksbelastingen.

[END SUB-OPTION2]

[END OPTION VAT]

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



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

4.2. The following payment plan is agreed for this Contract:

Milestone (MS) Description	Schedule Date	Payments from ESA to Contractor in Euro	Country (ISO Code)
Progress (MS 1): Upon successful completion of Preliminary Design Review and the Agency's acceptance of all related deliverables	To + ... months		
Progress (MS 2): Upon successful completion of ... and ... the Agency's acceptance of (**)	To + ... months		
Final Settlement (MS 3): Upon the Agency's acceptance of all deliverable items due under the Contract and the Contractor's fulfilment of all other contractual obligations including submission of the signed Contract Closure Documentation.	To + ... months	(not less than 10% of the total contract price)	
TOTAL			

Advance Payment(s) and other Financial Conditions:

Prime (P)	Company Name	ESA Entity Code	Advance Payment in Euro	Offset against	Offset by Euro	Condition for release of Advance Payment
P			Amount	MS 1	Amount	Upon signature of the Contract by both Parties.

[Option 1 for not SME] not exceeding 15%
[End of Option 1]

[Option 2 for SME] not exceeding 35%
[End of Option 2]



ARTICLE 5 - SPECIFIC PROVISIONS

5.1. Approval / Representatives of the Parties during Contract Execution

For the purpose of this Contract, the authorised representative of the Agency’s Director General is **Ms/Mr** [Name/Title].

The Agency’s representatives are:

- **Technical Officer:** Ms/Mr (XXX-XXX) for technical matters, or a person duly authorised by [her] [him];
- **Contracts Officer:** Ms/Mr (IPL-XXX) for contractual or administrative matters, or a person duly authorised by [her] [him].

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

To the EUROPEAN SPACE AGENCY (ESA)
 The European Centre for Space Applications and Telecommunications (ECSAT),
 Fermi Avenue,
 Harwell Campus,
 OX11 0FD Didcot,
 United Kingdom,

a) for technical matters as follows:

	To:	With copy to:	
Name	Ms/Mr	Ms/Mr	Ms/Mr
Telephone			
Fax No.			
e-mail	@esa.int	@esa.int	@esa.int

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

	To:	With copy to:	
Name	Ms/Mr	Ms/Mr	Ms/Mr
Telephone			
Fax No.			
e-mail	@esa.int	@esa.int	@esa.int



c) A copy of each CCN shall be sent in electronic format to ARTES-AT-CCN@esa.int.

5.1.2 Contractor’s Representatives:

All correspondence for the Contractor shall be addressed as follows:

.....

a) for technical matters as follows:

	To:	With copy to:
Name		
Telephone No.		
Fax No.		
e-mail address		

b) for contractual and administrative matters as follows:

	To:	With copy to:
Name		
Telephone No.		
Fax No.		
e-mail address		

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

5.2. Infringement of the Law – Infringement of Third Party rights

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

5.2.2 In the event of a reasonable suspicion of infringement of any patent rights and other Intellectual Property Rights of Third Parties, the Work being performed under this Contract shall be stopped immediately. Assessment of the suspicion shall be performed by the Contractor and if confirmed, both Parties shall agree on a new approach to achieve the objectives of this Contract, either by obtaining the applicable licence(s) from Third Party(ies) by the Contractor and/or by signing a Contract Change Notice (CCN) agreed upon between both Parties, in order to avoid the infringement. The purpose of the CCN shall be either to restart the Work, if

plausible due under the changed circumstances; or to terminate the Contract, in accordance with Article 5.5.3 hereunder, if the infringement cannot be avoided.

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

5.3. Liabilities

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

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

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

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

5.4. Items made available by the Agency

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

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

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



- 5.5.1.2 Should any of the results of the Work fail to meet any of the agreed requirements and/or specifications to such an extent as to seriously jeopardise the performance of this Contract and/or to defeat its objectives, the Agency reserves the right to terminate this Contract.
- 5.5.2 Should the Contractor fail to obtain an export authorisation from the competent national authority, the Agency shall have the right to terminate this Contract without further notice.
- 5.5.3 Termination of this Contract as specified above shall entail no compensation being due to the Contractor other than the amounts corresponding to the Milestone Payments already made hereunder at the time of serving of the termination notice. Any amounts corresponding to Advance Payments not entirely offset hereunder shall remain payable to the Agency.
- 5.6. Changes to this Contract
- 5.6.1 The Agency reserves the right at any time to request a change to the requirements covered by this Contract. The Agency may also accept changes proposed by the Contractor. The requesting Party shall communicate all change requests to the other Party in writing through the Parties' Representatives indicated in Article 5.1 above.
- 5.6.2 The cost impact relative to any change resulting from a request, by the Agency, to modify the requirements covered by this Contract shall be borne by the Agency. The Contractor shall be responsible for the consequences and shall bear the cost of any other change.
- 5.6.3 When responding to a change request issued by the Agency or as a means to propose changes to the Agency, the Contractor shall submit a committing change proposal including a detailed quotation of the effects of the change on the contractual work, price, schedule, deliverable items and any other contractual terms and conditions.
- 5.6.4 Upon evaluation and acceptance by the Agency of a change proposal, any amendment to this Contract shall be introduced in the form of a Contract Change Notice (CCN form attached hereto in Appendix 2). In case of rejection, the Agency shall inform the Contractor accordingly, together with the reasons for the rejection.

ARTICLE 6 - INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

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

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

6.2. Ownership and Use of Intellectual Property Rights

6.2.1 Ownership of Intellectual Property Rights

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

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

6.2.2 Use of Intellectual Property Rights

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

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

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

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

b) Participating States as well as any Persons and Bodies under their jurisdiction, to use on "favourable conditions" (i.e. more favourable for the purchaser than market conditions but still allowing reasonable profit for the seller) for own public requirements of such States.

c) Academic and research institutions within the ESA Participating States to use on a free licence without the right to grant sub-licences, for their own scientific

research purposes, excluding commercial purposes and providing the Contractor agrees such use is not contrary to its Legitimate Commercial Interests.

6.3. Background Intellectual Property

6.3.1 Background Intellectual Property - Definition

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

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

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

6.3.2 Use of Background Intellectual Property

[Option A]

The Agency acknowledges that the Contractor will use Background Intellectual Property to achieve the objectives of this Contract.

The price agreed for this Contract includes all the fees relative to access to and use of the said Background Intellectual Property, including, but not limited to, the right to sub-license, by the Agency, for the purposes set forth in this Contract.

Any deliverable documents and reports containing Background Intellectual Property shall consist of distinct, appropriately marked and separable parts or volumes in order to precisely identify and segregate the Background Intellectual Property itself.



The above-mentioned Background Intellectual Property is identified as follows:

Exact name of BIPR Item	Owner	Description	Patent # or Ref. / Issue / Revision / Version #	Contract / Funding Details under which the IPR was created	Date of creation of the version of the BIPR listed here	Licence	Affected deliverable with comments	Protected Format (Y/N)

The Background Intellectual Property owned by the Contractor or a Third Party shall remain the property of the owner.

Background Intellectual Property to which the Agency requires access for the sole purpose of technical or legal inspection during the execution of this Contract shall be treated as Proprietary Sensitive Information as set forth under 6.1.2 and 6.1.3 above.

The following conditions shall apply to Background Intellectual Property which the Contractor delivers together with, or as part of, the deliverable items due under this Contract:

- a) For Background Intellectual Property delivered in a format making it readily decipherable and meaningful by inspecting, accessing or using the said deliverable items:
 - i. The Contractor shall grant to the Agency, or ensure that the Agency be granted, an irrevocable, free of charge, world-wide licence to enable the Agency to autonomously use, operate, copy, modify and sub-license the Background Intellectual Property limited to its own requirements relative to this Contract and/or the projects or activities listed under ii. below;
 - ii. Projects or activities for which the Agency is entitled to a licence as described under i. above:

All present and future activities/projects in the context of the Agency's ARTES Programme.

b) For Background Intellectual Property delivered in protected format:

- i. The Contractor shall grant the Agency, or ensure that the Agency be granted, an irrevocable, free of charge, world-wide licence to enable the Agency to autonomously use, copy, distribute and sub-license, without any restrictions, the Background Intellectual Property delivered in protected format under this Contract as part of other deliverable items, limited to its own requirements relative to this Contract and/or the projects or activities listed under a) ii. above;
- ii. The Contractor shall grant the Agency, or ensure that the Agency be granted, an irrevocable, free of charge, world-wide licence to enable the Agency to autonomously use, operate, copy, distribute and sub-license the Background Intellectual Property delivered in protected format as a separate item under this Contract, limited to the Agency's Own Requirements relative to this Contract and/or the projects or activities listed under a) ii. above;
- iii. The Agency shall not decrypt, decompile or reverse-engineer Background Intellectual Property delivered in protected format and shall reflect this obligation onto any (sub)licence or agreement into which it may enter to further distribute to any Third Party the said Background Intellectual Property as the Agency sees fit.

[End Option A]

[Option B]

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

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

[End Option B]

6.4. The free licences provided for the benefit of ESA

The free licences provided on Intellectual Property arising from Work performed under this Contract and/or Background Intellectual Property indicated in 6.3 for the benefit of ESA shall be deemed granted through signature of the present Contract and without the need to implement a separate licence.



6.5. Transfer outside the ESA Member States

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



Done in two (2) originals, one for each Party to this Contract,

On:

On:

For.....

For the European Space Agency (ESA)

..... [Name]
..... [Title]

..... [Name]
..... [Title]

[OPTION FOR CONTRACTS PLACED UNDER ITALIAN LAW ONLY]
SPECIFIC APPROVAL (*FOR CONTRACTS PLACED UNDER ITALIAN LAW ONLY*)

The Contractor certifies that he specifically approves the following conditions expressed herein:

- [Art. 1.3.4: Subcontracts]**
- Art. 5.2: Infringement of the Law - Infringement of Third Party rights**
- Art. 5.3.1: Damage to Staff and Goods**
- Art. 5.3.2: Liability for Consequential Damages during the Execution of the Contract**
- Art. 5.5: Agency’s Rights in case of Contractor’s Under-Performance**

On behalf of the Contractor,

on this day

.....
Name and title
[END OPTION]



APPENDIX 1

STATEMENT OF WORK, ref.: 6B.042, issue 1

APPENDIX 2

CONTRACT CHANGE NOTICE

For submission of a change, 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, Work Breakdown Structure, 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.

A copy of each CCN shall be sent in electronic format to ARTES-AT-CCN@esa.int.

For schedule update at no additional cost exclusively, a schedule delay CCN template can be downloaded at <https://artes.esa.int/documents>, completed and submitted.



	DIRECTORATE:	Contractor:
		Contract No.: 4000XXXXXXXX/XX/XX/XXX
CONTRACT CHANGE NOTICE No.		DATE:
TITLE OF AREA AFFECTED (WORK PACKAGE ETC):		WP REF:
		INITIATOR OF CHANGE:
DESCRIPTION OF CHANGE		
REASON FOR CHANGE		
PRICE BREAKDOWN (Currency)/PRICE-LEVEL		
EFFECT ON OTHER CONTRACT PROVISIONS		START OF WORK
		END OF WORK
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 2 to
ESA AO/1-8976/17/UK/ND
Appendix 3 to ESA Contract No. 4000xxxxxx/17/UK/ND
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APPENDIX 3: VAT WAIVER (IF APPLICABLE)