­AF – version 02.2022

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| --- |
| Appendix 3 to AO/1-10285/20/NL/AF: **AGILE Draft Contract***(For details and conditions of application, please refer to the Cover Letter of the Call for Proposals, eli1-10285 in esa-star Publication)* |

ESA Contract No. 4000xxxxxx/xx[year]/XX[country code]/XX[initials of CO]/xx[initials of ACO]

**with**

**Company name**

Name of activity (it has to be the same as the title in the proposal)

|  |
| --- |
| **ARTES 4.0 CORE COMPETITIVENESS GENERIC PROGRAMME LINE -****Component A: ADVANCED TECHNOLOGY****Activity Reference …………** |

|  |
| --- |
| **ARTES 4.0 STRATEGIC PROGRAMME LINE -****OPTICAL COMMUNICATION – SCYLIGHT****Activity Reference …………** |

|  |
| --- |
| **ARTES 4.0 STRATEGIC PROGRAMME LINE -****SPACE SYSTEMS FOR SAFETY AND SECURITY (4S)****Activity Reference …………** |

|  |
| --- |
| **ARTES 4.0 STRATEGIC PROGRAMME LINE -****SPACE FOR 5G****Activity Reference …………** |

**Colour code:**

**Yellow fields are to be filled in by**

**the tenderer, green fields are to be**

**completed by ESA.**

**DRAFT CONTRACT**

Between:

**The EUROPEAN SPACE AGENCY**,

(hereinafter called the “Agency” or “ESA”),

having its seat at: 24 rue du Général Bertrand, CS 30798, 75345 Paris CEDEX 7, France,

represented by its Director General, Mr Josef Aschbacher,

acting through its establishment:

**[OPTION]**

The European Space Research and Technology Centre (ESTEC),

located at: Keplerlaan 1,

 2201 AZ Noordwijk,

 The Netherlands, **[END OPTION]**

**[OPTION]**

The European Centre for Space Applications and Telecommunications (ECSAT),

located at: Fermi Avenue,

 Harwell Campus,

 Didcot,

 OX11 0FD,

 United Kingdom, **[END OPTION]**

of the one part,

and:

**Name of company (insert the full name of your company)**

(hereinafter called the “Contractor”),

whose registered office is at:

street and number,

Post code and City,

Country,

represented by Mr/Ms person signing the Contract, its Capacity (e.g. CEO, CFO, etc.),

of the other part,

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

**TABLE OF CONTENTS**

[ARTICLE 1 - SUBJECT OF THE CONTRACT; GENERAL TERMS OF EXECUTION 6](#_Toc67755463)

[ARTICLE 2 - DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY 9](#_Toc67755464)

[ARTICLE 3 - PRICE 13](#_Toc67755465)

[ARTICLE 4 - PAYMENTS AND INVOICING 15](#_Toc67755466)

[ARTICLE 5 - SPECIFIC PROVISIONS 22](#_Toc67755467)

[ARTICLE 6 - INTELLECTUAL PROPERTY RIGHTS 29](#_Toc67755468)

[ARTICLE 7 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE CONTRACT 36](#_Toc67755469)

Annex: Personal Data Controller to Controller Annex (“PDCC Annex”)

Appendix 1: Contract Change Notice

Appendix 2: Contract Closure Documentation

Preamble

Whereas:

- The objectives of the ESA ARTES AGILE activities, hereinafter referred to as "AGILE", are to explore the viability of new technology/system concepts and consolidate the business plan for a product development,

- ESA has agreed that the activity described in Article 1 hereafter meets the objectives of AGILE,

The parties have now agreed to execute the work at the specific conditions set forth hereafter:

**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. |
| “**Contract**” |  | means an agreement established in writing the subject of which is any activity carried out to- or for the Agency in exchange of a price or another consideration, including any amendment to such agreement via a Contract Change Notice (“CCN”). |
| “**Day**”**“Favorable Conditions”** **“Financial Conditions”** “**Force Majeure**” |  | means calendar day.means conditions a seller is willing to sell on and a purchaser willing to accept which are more favourable to the purchaser than Market Conditions (and which normally allow reasonable profit for the seller).means the conditions a seller is willing to sell on and a purchaser willing to accept taking into account Market Conditions but which compensate the parties who paid for development of the subject matter being sold (or licensed) according to the amount each party contributed for development.means an event which is, unforeseeable, unavoidable and external at the time of Contract signature, occurs beyond the control of the affected Party and renders the performance of the Contract impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks. |
| “**Intellectual Property Rights**” |  | means all Registered Intellectual Property Rights, and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world. |
| “**Legitimate Commercial Interests**” |  | means an interest the 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. |
| **“Market Conditions”**“**Member State**” |  | means conditions a seller is willing to sell on and a purchaser is willing to accept without restrictions or influence by the Agency.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. |
|  |  |  |
| “**Persons and Bodies**” |  | means any individual, partnership, company, research organisation or legal entity under the jurisdiction of a Participating State which, when relevant, meets the criteria set out in Article II (3) of Annex V to the European Space Agency Convention. |
| “**Progress Payment**” |  | means a payment that is made against: (a) successful achievement, certified in writing by the Agency’s representatives, of a milestone defined in the milestone payment plan of a fixed price contract; (b) cost reports approved by the Agency in a cost reimbursement contract for a period agreed in the Contract. |
| “**Registered Intellectual** **Property Rights**” |  | means all rights granted by law through registration with an authority or office (whether actually registered or in the form of applications) including all registered patents, utility models, designs, topography rights, domain names and trademarks or equivalent rights and rights of action anywhere in the world. |
| “**Subcontractor**” |  | means the economic operator who is under contract to a Contractor of the Agency to provide supplies or services in support of a Contract placed by the Agency. |
| “**Third Party**” |  | means a natural or legal person not having signed the Contract. |

* 1. SUBJECT OF THE CONTRACT; GENERAL TERMS OF EXECUTION
1. The Contractor, as further described in the Contractor’s Proposal, insert reference, dated insert the date of your proposal, not attached hereto but known to the Parties, undertakes to perform an AGILE study on the activity “xxxxxxxxxxxxx” (all hereafter referred to as “the Work”) and to deliver all the items listed in Article 2 of this Contract
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:

The specific Articles of this Contract with its PDCC Annex;

 [OPTION: if applicable] The signed Minutes of the Negotiation Meeting held on ..., reference …, issue …, revision …, dated …, [END OF OPTION: if applicable]

 The Contractor’s Proposal, insert reference …, issue …, revision …, dated …, not attached hereto but known to both Parties.

1. General Terms of Execution
2. The Contractor’s own sales conditions shall not apply.
3. 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 [………………..].
4. The Parties shall use their best endeavours to amicably settle any dispute arising out of the Contract. Failing an attempt towards an amicable settlement, all disputes shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one (1) or three(3)arbitrators designated in conformity with such Rules. The Arbitration Tribunal shall sit in [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.
5. The Contractor shall be fully responsible towards the Agency for the proper execution of the Work, **[OPTION: if Subcontractors]** 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 placing of subcontracts and processing of payments throughout the consortium, the Contractor shall ensure that the below provisions are duly reflected in all subcontracts entered into for the purpose of this Contract:

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

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

the said Subcontractor may directly contact the Agency at:

indirectpayments@esa.int.

In doing so, such Subcontractor shall attach the Standard Contact Form, available at: <https://esastar-publication.sso.esa.int/supportingDocumentation> properly filled in or provide the same information in the body of the email.

In case any Subcontractor has SME status, as per the definition of SMEs given by the European Commission:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>,

the Contractor shall ensure that the relevant subcontract foresees an automatic grant of a 35% Advance Payment.

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

**[END OPTION]**

1. 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.
2. In the discharge of its obligations under this Contract, the Contractor shall additionally comply with the Eligibility Requirements identified in Article 18, paragraphs 2 and 12, of the Procurement Regulations.

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

1.3.7 The Contractor shall, in accordance with the Agency’s Policy on the Prevention,

Detection and Investigation of Fraud, to the extent allowed by applicable national law, cooperate with the Agency’s investigation team in any investigation of fraud initiated by the Agency and inform its personnel of their obligation to cooperate accordingly. The Contractor shall ensure that this provision is duly reflected in all subcontracts entered into for the purpose of this Contract.

* 1. DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY
1. General
2. Delivery shall be considered as effected only when the relevant deliverable items are in the Agency’s possession.
3. 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.
4. No price adjustment in favour of the Contractor will be applicable for the period of delay in delivery. Penalties for late delivery do not apply, and similarly they will not apply in the subcontract(s) that may be placed by the Contractor.

 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.

1. 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.

1. In the event of an alleged delay in delivery due to Force Majeure, the Contractor shall report to the Agency the Force Majeure event and its immediate consequences within one (1) week after its occurrence. The Contractor shall bear the burden of proof for the existence, duration and consequences of Force Majeure, such proof to be provided within one (1) month from the occurrence of the Force Majeure event.

 In case of Force Majeure, the Contractor shall not be considered at default and its obligations under the Contract shall be suspended during the Force Majeure event. The Contractor shall make reasonable efforts to mitigate the impact on the schedule and the performance of its contractual obligations.

**[OPTION: if Subcontractors]**

Force Majeure event at Subcontractor’s level shall be considered a case of Force Majeure for the performance of the Contractor’s obligations, if the Contractor proves that the delay in the delivery of the equipment or works covered by the subcontract due to the Force Majeure event had an unavoidable impact on the final delivery dates stipulated in the Contract.

**[END OPTION]**

In case of Force Majeure, an extension of the time-limit for execution or a postponement of delivery dates shall be granted in writing by the Agency.

If the delay due to the Force Majeure exceeds three (3) months, the Parties are entitled to terminate the Contract by giving not less than two (2) months’ written notice to the other Party, unless the Parties agree to modify the Contract in order to take into account the effects of the Force Majeure.

In case of termination due to Force Majeure, the amount to be paid shall be calculated as per Articles 5.6.2 and 5.6.4. No other payments, compensation or indemnities shall be due by the Agency to the Contractor.

**[OPTION to be used during COVID-19 pandemic]**

Either Party may implement Article 2.1.5 should unknown consequences of the COVID-19 outbreak at the time of signature of the present Contract affect the performance of its obligations, despite such event being known to the Parties at the time of Contract signature.

**[END OPTION]**

1. 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.

1. Deliverable Documents

The Contractor shall, during the performance of this Contract, deliver all documentation and reports specified in Part 5 of the Contractor’s proposal, 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:

1. The draft versions of the final documents as defined in Section 5.4 of the Contractor’s proposal shall be submitted for approval, in electronic format, to the Agency’s Technical Officer specified herein, not later than **xx.xx.xxxx (date) insert final delivery date for the Agency’s approval**

The finalised versions thereof shall be issued not later than four (4) weeks after the approval of the draft versions.

1. The signed electronic copy of the Contract Closure Documentation (Appendix 2) shall be delivered 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).

[Option: Software]

1. Software

The Contractor shall deliver the object code relevant to the software, mathematical models, data files, design files and computer programmes, specified in Part 5 of the Contractor’s proposal, not later than […]

[End Option: Software]

[Option: Hardware]

1. Hardware

The hardware specified in Part 5 of the Contractor’s proposal shall be delivered to the Agency’s Technical Officer specified herein, not later than […] .

In proximity with the conclusion of the Contract a loan agreement or waiver of the transfer of ownership to the Agency may be requested by the Contractor[and/or Subcontractor]; any such request shall include a description of the intended utilisation, which shall be connected with the objectives of this Contract. The Agency, however, is not obliged to accept such request and will make any acceptance conditional upon the Contractor's commitment to utilise the hardware exclusively in the manner approved by the Agency. Ownership of assets with an individual or batch value below 10,000 Euro shall remain with the Contractor.

[End Option: Hardware]

* 1. PRICE

The agreed cost presented by the Contractor for this Contract amount to:

… EUR

(… Euro),

towards which the Agency contributes an Agency’s price of this activity (the “Contract Price”), amounting to:

… EUR

(… Euro).

The agreed cost and price are broken down per Contractor and Subcontractor(s) as follows:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Company Name**  | **ESA Entity Code**  | **Type P/Prime SD/Subco Direct SI/Subco Indirect** | **Cost** | **Price** | **Co-funded %** | **Country (ISO Code)** |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

The difference between the agreed cost of the activity and the Contract Price shall be funded by the Contractor through its internal funds and shall not be recharged to the Agency in other Contracts, nor in the form of overheads.

The Agency may decide that certain items produced or purchased under the Contract during its implementation (see Article 7 below) shall become ESA Fixed Assets. Such items shall be identified as becoming ESA Fixed Assets by 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, except in the case of non compliance with the co-funding conditions agreed for this Contract. In such case, the amount of ESA price shall be adjusted to match the percentage of maximum co-funding allowed for the Agency.

The Agency’s financial contribution to the Contract shall not be used for purposes other than those for which they were originally granted.

1. Any amount stated above does not include any value added taxes (“VAT”) or import duties in the Member States of the Agency.
2. **[OPTION 1:** for EU Prime Contractors in contract with all ESA establishments and all contracts with ECSAT]

The price is stated as being Delivered Duty Paid (“DDP”) for all deliverables, exclusive of import duties and VAT in accordance with the Incoterms® 2020, to the addressees mentioned, or referred to, in Article 5 of this Contract. Reference to the Incoterms® in this provision is exclusively for the purpose of price definition. The price furthermore includes all costs relative to the Contractor’s obligations under Article 2.1.4 above.

**[OPTION 2:** for non-EU Prime Contractors in contract with all ESA establishments, except ECSAT**]**

3.4 The price is stated as being Delivered At Place (“DAP”) for all deliverables, in accordance with the Incoterms® 2020, to the addressees 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 2.1.4 above.

* 1. PAYMENTS AND INVOICING
1. Payments

Payments shall be made within thirty (30) 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 below[[1]](#footnote-1). Only upon fulfilment of these requirements shall the Agency regard the invoice as due.

Requirements to be fulfilled:

1. Advance Payment:
* Advance Payment Request (“APR”) (if any): 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.

1. Progress Payment(s)[[2]](#footnote-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; and
* Invoice.
1. 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; and
* Invoice; and
* Delivery, and acceptance by the Agency, of all due items and fulfilment of all other obligations in accordance with the terms of this Contract; and
* Signed Contract Closure Documentation using the template provided in Appendix 2.

Payments shall be made according to the provisions hereunder:

1. 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) Days of receipt, the relevant Subcontractor(’s)(s’) invoice(s) 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 the payment(s) made to its Subcontractor(s).

[END OPTION: if Subcontractor(s)]

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

1. If applicable, invoices shall separately show all due taxes and/or duties.
2. 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.
3. 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 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.

1. 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 (if any), all confirmations and all invoices 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: esait.Service.Desk@esa.int), specifying a contact name, the company name and the ESA Contract Number.

 b) 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 by email 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 esait.Service.Desk@esa.int.

c) The Contractor undertakes to complete confirmations and invoices, 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-OPTION 1:** VAT Exemption Certificate issued:

*- ESTEC: when non NL Prime in Contract with ESTEC*

 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 the present Contract for signature. On invoices submitted via esa-p, the number shall be put in the respective field “VAT Exemption Number”.

*[****Sub-Option:*** *for all Establishments when Prime is a Swiss entity]*

In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to the “Antrag auf Befreiung von der Mehrwertsteuer” which the Agency provided to the Contractor when forwarding the present Contract for signature. On all invoices, (submitted via esa-p) the following note is mandatory: “von der Steuer befreit” or “Befreiung von der MWST nach Art. 144 MWSTV”.

***[End Sub-Option]***

[**END SUB-OPTION 1**]

[**SUB-OPTION 2:** Exemption under national law:

*- All establishments: when Prime is an IT entity*

*- ESTEC: when Prime is an NL entity in Contract with ESTEC*

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

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-OPTION 2**]

[**SUB-OPTION 3:** for ECSAT & for all establishment when Prime is a GB entity**]:**

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

**[END SUB-OPTION 3]**

**[END OPTION VAT]**

1. 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.
2. Any special charges related to the execution of payments shall be borne by the Contractor.
3. Any questions concerning the operation of esa-p shall be addressed to the ESA Helpdesk (mail to: esait.Service.Desk@esa.int).
4. Any questions concerning the latest status of due invoices can be addressed to the ESA Payment Officer (mail to: esa.payment.officer@esa.int).
5. The following Payment Plan is agreed for this Contract:

|  |  |  |  |
| --- | --- | --- | --- |
| **Milestone (MS) Description** | **Schedule Date** | **Payments from ESA to (Prime) Contractor****(in Euro)** | **Country** **(ISO code)** |
|
| Progress Payment (MS1): Upon successful completion of Mid-Term Review (MTR) and the Agency’s acceptance of the related deliverable items. | To + X months | 60% of the total price |  |
| Final Settlement (MS2): Upon successful Final Review, the Agency’s acceptance of all deliverable items due under the Contract and the Contractor’s fulfilment of all other contractual obligations including submission of the Contract Closure Documentation. | To + XX months | 40% of the total price |
| **TOTAL** |  |

Advance Payment and other Financial Conditions:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Prime (P)** | **Company****Name** | **ESA Entity Code** (at contract signature) | **Advance Payment****(in Euro)** | **Offset against** | **Offset by Euro** | **Condition for release of the Advance Payment** (if applicable) |
| P (SME) | Insert the name of your company | Insert ESA Entity Code | Insert 35% of the total ESA Price | MS1 | 35% of the total ESA Price | Upon signature of the Contract by both Parties |
| P (non-SME) | Insert the name of your company | Insert ESA Entity Code | Insert 15% of the total ESA Price | MS1 | 15% of the total ESA Price | Upon signature of the Contract by both Parties |

**[[3]](#footnote-3)**

* 1. SPECIFIC PROVISIONS
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 Mr Carlo Elia, Head of Technologies, Products and Systems Department.

 The Agency’s representatives are:

* Technical Officer: Ms/Mr …………………………………….. (XXX-XXX) for technical matters, or a person duly authorised;
* Contracts Officer: Ms/Mr …………………………………….. (IPL-PXX) for contractual or administrative matters, or a person duly authorised.
1. All correspondence for the Agency shall be addressed as follows:

 EUROPEAN SPACE AGENCY (ESA),

[OPTION]

 The European Space Research and Technology Centre (ESTEC),

 Keplerlaan 1,

 2201 AZ Noordwijk,

The Netherlands, [END OPTION]

[OPTION]

 The European Centre for Space Applications and Telecommunications (ECSAT),

Fermi Avenue,

Harwell Campus,

Didcot,

OX11 0FD,

 United Kingdom, [END OPTION]

a) for technical matters as follows:

|  |  |  |
| --- | --- | --- |
|   | To: | With copy to: |
| Name | Ms/Mr | Ms/Mr | Ms/Mr (name of ACO)(*Modis/Octagon/Contractor Company* for ESA) |
| Telephone No. | +xx xx xxx xxxx | +xx xx xxx xxxx | +xx xx xxx xxxx |
| Email Address | @esa.int | @esa.int | @esa.int |

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

|  |  |  |
| --- | --- | --- |
|   | To: | With copy to: |
| Name | Ms/Mr | Ms/Mr (name of ACO)*(Modis/Octagon/Contractor Company for ESA)* | Ms/Mr |
| Telephone No. | +xx xx xxx xxxx | +xx xx xxx xxxx | +xx xx xxx xxxx |
| Email Address | @esa.int | @esa.int | @esa.int |

* 1. Personal Data Protection matters shall be addressed to the ESA Data Protection Officer at the following email address:

dpo@esa.int

d) A copy of each CCN shall be sent in electronic format to:

**[OPTION]**

ARTES-AT-CCN@esa.int

5G-WP-CCN@esa.int

4S-WP-CCN@esa.int

ScyLight-WP-CCN@esa.int

**[END OPTION]**

1. Contractor’s Representatives:

The Contractor’s representatives are:

* Technical Officer: Ms/Mr …………………………………….. for technical matters, or a person duly authorised;
* Contracts Officer: Ms/Mr …………………………………….. for contractual or administrative matters, or a person duly authorised.

All correspondence for the Contractor shall be addressed as follows:

…………………….,

…………………….,

…………………….,

…………………….,

a) for technical matters as follows:

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

* 1. for contractual and administrative matters as follows:

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

* 1. Personal Data Protection matters shall be addressed to the Data Protection contact point as follows:

|  |  |
| --- | --- |
|   | To: |
| Name |  |
| Telephone No. |  |
| Email Address |  |
| Mail Address |  |

1. 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.

 **[OPTION 1 or 2 below to be selected by the Contractor.** N.B. electronic signature encompasses both, simple electronic signature (handwritten scanned) or the use of e-signing digital tools**]**

[OPTION 1: electronic signature using digital signatures only, both Parties to sign using e-signing digital tools]

The Parties agree that digital signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.

[END OPTION 1]

[OPTION 2: electronic signature. Each of the Parties can use either e-signing digital tools or simple electronic signature (handwritten scanned)]

The Parties agree that electronic signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.

[END OPTION 2]

1. Infringement of the Law – Infringement of Third Party Rights
2. The Agency shall not be responsible if the Contractor infringes the laws or statutes of its country or of any other country whatsoever.
3. In the event of a reasonable suspicion of infringement of any patent rights and other Intellectual Property Rights of a Third Party, the Work being performed under this Contract shall be stopped immediately. Assessment of the suspicion shall be performed by the 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 the Third Party 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 (i) restart the Work, if plausible, due under the changed circumstances; or (ii) 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 a Third Party with respect to the Work under this Contract. This obligation does not extend to infringements resulting from the use of documents, patterns, drawings or items supplied by the Agency or from a modification or combination of the deliverables due hereunder made by the Agency after their acceptance.

1. Liabilities
2. 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:
3. 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.
4. Claims for damage caused by one of the Parties to goods owned by the other Party shall be settled in accordance with the Law governing the Contract. Except in case of gross negligence or wilful misconduct, the total aggregate liability of either Party for damage to goods owned by the other Party shall not exceed the amount which is quoted in the Contract as the total Contract price.
5. Except in case of gross negligence and wilful misconduct, the Parties shall not be liable towards each other for consequential damages sustained by the Parties, arising from and during the execution of the Contract. For the sake of clarity and as an example, consequential damages include, but are not limited to: loss of contract, income or revenue; loss of profit or interests; loss of financing; loss of customer; loss of availability and use of facilities; loss of availability and use of employees’ productivity or loss of services of such persons; loss of opportunity; loss of rental expenses.
6. Items Made Available by the Agency

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

1. Agency’s Rights in Case of Contractor’s Under-Performance or non-compliance with co-funding rules
2. 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.
3. 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 by giving written notice by registered mail.
4. 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. Should the Contractor’s fail to meet the co-funded element (partial or totally) to be provided by the Contractor [and the Subcontractors] or should the Contractor resort to fraudulent practices (including but not limited to theft, corruption, embezzlement, bribery, forgery, misrepresentations, collusion, money laundering and concealment of material facts that may affect, amongst other, the implementation of the co-funded element or the nationality accounted for by the Agency) the Agency shall have the right to terminate this Contract without further notice
6. 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 the termination notice. Any amounts corresponding to Advance Payments not entirely offset hereunder shall remain payable to the Agency. In the event of suspicion of fraudulent practices in connection with the Contract, the Agency will conduct an investigation which may involve external parties.
7. Termination without fault of the Contractor
8. The Agency shall have the right to terminate this Contract either wholly or in part by giving written notice by registered mail before the start of the following technical phase as specified in the Contractor’s Proposal. The Agency shall exercise such right by serving a termination notice to the Contractor within thirty (30) Days counting from the completion of the preceding phase. A decision by the Agency not to continue further with the Work at the end of a phase shall not lead to the application of Article 5.6.
9. The Agency shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the total price for the Work set forth in the Contract.

* + 1. Changes to this Contract

 This Contract does not foresee any changes increasing the scope or price of the Work. Any modification hereto shall, in any case, require the Agency’s prior written approval and shall not increase the total price to equal or above 250,000 Euro.

* 1. INTELLECTUAL PROPERTY RIGHTS
1. Information to be provided by the Contractor – Protection of information
2. 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.
3. 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 in writing. Any request from the Contractor shall be submitted in writing and accompanied by an appropriate justification.

1. 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.
2. 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;
* at the time of circulation is already known by the receiving Party and is not hindered by any obligation not to circulate;
* is later acquired by the receiving Party from another source and is not hindered by any obligation not to circulate; or
* is required to be circulated by law or order of a court of competent jurisdiction.
1. Ownership and Use of Intellectual Property Rights
2. 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. The Contractor shall as soon as possible report to the Agency any results arising from such a Work which may in its opinion be protected as Registered Intellectual Property Rights and state whether it 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 theterms set out in Article 6.2.2below but, unless agreed otherwise with the Contractor, the Agency shall not disclose such information until publication of the registration application.

1. Use of Intellectual Property Rights

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

a) the Agency, 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.

b) ESA Participating States as well as any Persons and Bodies under their jurisdiction, a worldwide licence to use on Financial Conditions, without the right to grant sub-licences, for the Agency’s Own requirements.

1. Background Intellectual Property
2. Background Intellectual Property – Definition - Ownership

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

1. has not been generated under contract with the Agency either prior to or during execution of this Contract, and
2. is relevant to the Work carried out under this Contract, and
3. the Contractor uses to achieve the objectives of this Contract, and
4. is delivered to the Agency to enable it to use, operate, copy, distribute and sublicense the deliverable items due under this Contract as specified in the Agency’s requirements, and
5. 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.

The Background Intellectual Property Rights owned by the Contractor, Agency or a Third Party shall remain the property of the owning party and no representation or act by a party during performance of the Agency Contract shall indicate or be construed as providing any other right, title or interest in such Background Intellectual Property Rights other than in accordance with these Clauses and Conditions.

1. Use of Background Intellectual Property

Intellectual Property Rights required by the Contractor arising from work performed under another Contract with the Agency shall be owned, made available and licensed in accordance with that other Contract.

If the Agency requires Background Intellectual Property Rights owned by the Contractor for the Agency project specified in the Agency Contract, the Contractor shall grant the Agency an irrevocable, worldwide licence to enable the Agency to use and modify any product, application or result of the Agency Contract for that project on Favourable Conditions. If any party requires Background Intellectual Property Rights owned by the Contractor to use and modify any product, application or result of an Agency Contract for the Agency’s Own Requirements other than for the project specified in the Contract the Contractor shall grant a licence to that party on Market Conditions unless contrary to the Contractor’s Legitimate Commercial Interests.

If a Subcontractor requires Background Intellectual Property Rights that the Contractor owns the Contractor shall grant the Subcontractor a licence on Favourable Conditions solely to enable the Subcontractor to fulfil its obligations directly relating to the Agency Contract.

If the Agency, the Contractor or a Subcontractor requires Background Intellectual Property Rights owned by a Third Party the Contractor shall use its reasonable endeavours to ensure that the owner of the Background Intellectual Property Rights grants a licence to the Agency, Contractor or Subcontractor to enable the completion of the Agency Contract. In addition the Contractor shall use its reasonable endeavours to ensure that the Third Party owner of the Background Intellectual Property Rights grants the Agency a licence to the Background Intellectual Property Rights for the Agency to use and modify any product, application or result of the Agency Contract in accordance with these Clauses and Conditions for the Agency project specified in the Agency Contract. For the avoidance of doubt the Agency shall pay any reasonable licence fee.

The Contractor warrants that to the best of its knowledge information and belief that

the use of Background Intellectual Property Rights by the Agency and/or the Contractor for the purposes identified in the Agency Contract will not infringe any

Intellectual Property Rights owned by Third Parties.

1. The free licences provided for the benefit of ESA

 The free licences provided on Intellectual Property arising from Work performed under this Contract and/or Background Intellectual Property indicated in Article 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.

1. 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.

* 1. ITEMS PRODUCED OR PURCHASED UNDER THE CONTRACT - FIXED ASSETS

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

4.2 The title to the property of any items produced 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 in the national currency equivalent to, or above 10,000 Euro, shall pass to the Agency unless otherwise decided by the Agency.

In view of the above, all such items are to be delivered to the Agency at the end of the Contract. They may also be delivered at an earlier stage if so requested by the Agency where this will not cause a problem to the Contractor in completing the work specified in the Contract.

4.3 The Contractor shall maintain an inventory of all such items (called “Contract Inventory”) and shall mark those items as falling under this Article of the Contract.

The inventory shall be updated and made available to the Agency during the execution of the Contract. A final issue of that inventory shall be submitted with the final contractual deliverables as foreseen in Appendix 2, Section 2.1.2.

If that inventory 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.

4.4 Upon completion of the work specified in the Contract, the Agency shall take decisions regarding the final destination and the final owner of each of the items listed in the Contract Inventory, apart from those which are governed by the provisions of Article 2.

The Agency shall be free to choose amongst the following options with respect to final destination and final owner:

a) the right to claim delivery to the Agency and transfer of ownership – with issue of appropriate instructions concerning packing and shipment (at the Contractor’s expenses),

b) the right to claim transfer of ownership and to negotiate with the Contractor a loan agreement if the Contractor is interested in keeping and using an item that the Agency wants to acquire without delay, with loan conditions making the Contractor responsible for the custody, the delayed delivery and the risks involved (at the Contractor’s expenses),

c) the right to extend the custody of an item to the Contractor (for instance: as a protection measure for further work contracted by the Agency) 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 instruction,

e) the right to request the Contractor to dispose of an item on conditions to be negotiated.

The decisions taken by the Agency shall lead to instructions or negotiations, as the case may be.

4.5 The Contractor shall comply with the Agency’s instructions and with the agreements referred to in Article 4.4 above.

4.6 This process will be recorded as per the relevant part of the Contract Closure Documentation.

Electronically/Digitally signed by the Parties to this Contract,

|  |  |
| --- | --- |
| In: .............................. | In: .............................. |
| On: .............................. | On: .............................. |
| For ………………....... | For the European Space Agency (ESA) |
| ------------------------------- | ------------------------------- |
| ………………………. [Name]………………………. [Title] | ………………………. [Name]………………………. [Title] |

[OPTION FOR CONTRACTS PLACED UNDER **ITALIAN LAW** ONLY]

SPECIFIC APPROVAL

The Contractor certifies its explicit approval of 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]

………………………. [Title]

[END OPTION]

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

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

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

**1. DEFINITIONS**

 The following specific definitions apply:

(i) “Agreed Territory” (of Processing) means:

a) ESA Member States, as they are listed in the ESA website at URL: <https://www.esa.int/About_Us/Corporate_news/Member_States_Cooperating_States>

b) European Union;

c) countries recognized by the European Commission as ensuring an Adequate Level of Protection of Personal Data under the European Union’s legal framework.

(ii) “Data Privacy Regulations” means respectively:

1. ESA PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at URL:

 <http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations>

1. the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing which provide an Adequate Level of Protection under the ESA PDP Framework (e.g EU Regulations in the field of personal data protection, including but not limited to the General Data Protection Regulation (Regulation (EU) nr. 2016/679) (hereinafter “GDPR”).

(iii) “Personnel” means:

a) with respect to the Contractor: any employee, agent or representative acting under the responsibility of the Contractor or, if subcontracting is permitted, of Contractor’s subcontractors;

b) with respect to ESA: any employee, agent or representative acting under the responsibility of ESA (e.g. staff members and seconded agents, consultants experts or employees of third parties).

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

**2. GENERAL**

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

1. the Contractor is governed by the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing, which provide an Adequate Level of Protection under the ESA PDP Framework (e.g. EU Regulations in the field of personal data protection, including but not limited to the GDPR.
2. ESA is governed by PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at the URL:

<http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations>

2.2. The Parties are considered separate Data Controllers of the Personal Data, with each Party being able to determine the purpose and means of Processing the Personal Data under its control in accordance with its privacy statement.

2.3 The Personal Data exchanged by the Parties in the frame of this Contract will only be processed for:

1. the performance of the Contract, including implementation, management, monitoring, audits and the fulfilment of the obligations set out in this Annex;
2. the management of the relationship of the Parties in relation to the Contract, notably for administrative, financial, audit or for communication purposes;
3. the compliance with any legal or regulatory obligation to which a Party is subject;
4. the compliance, in case the performance of the Contract requires access to the Parties’ premises, with the health, safety and security requirements, legal or regulatory obligations applicable to the respective Party in such matters.

**3. PERSONAL DATA EXCHANGED BY THE PARTIES**

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

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

**4. PARTY’S OBLIGATIONS**

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

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

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

**5. DATA RETENTION**

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

1. under the Data Privacy Regulations, (e.g. in the frame of audits, inspections and incidents) or
2. under the Party’s statutory obligations.

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

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

**6. CONFIDENTIALITY**

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

1. limiting access to the Personal Data of the other Party only to their Personnel, that:

- are required or authorized to access such Personal Data;

- have committed themselves to confidentiality or are under a statutory obligation of confidentiality;

- have received the appropriate Personal Data protection training.

1. taking into consideration, in terms of IT tools, product, applications, the principles of personal data protection by design and by default.

**7. SECURITY**

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

1. the on-going confidentiality, integrity, availability and resilience of Processing systems and services;
2. measures to protect Personal Data from accidental, unlawful or unauthorized access, use, destruction, loss, modification or transfer.

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

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

**9. TRANSFER**

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

**10. SUBCONTRACTORS**

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

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

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

**11. PERSONAL DATA BREACHES**

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

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

**12. LAW – DISPUTE RESOLUTION**

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

**13. EU STANDARD CONTRACTUAL CLAUSES**

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

13.2. As “adequate safeguards”, the Parties agreed to adopt the level of protection resulting from the provisions of the EU Standard Contractual Clauses for the Transfer of Personal Data to Third Countries pursuant to Regulation (EU) 2016/679, in their latest version released / approved by the European Commission (hereinafter “EU SCC”), which shall be deemed included, by reference, in the Contract, together with the Annexes of EU SCC filled in as appropriate, subject always to the prevailing principles applicable in relation to ESA:

a) the provisions of EU SCC will apply mutatis mutandis, only to the extent compatible with the specific statute of ESA as international intergovernmental organisation and always subject to the application of ESA Convention, in particular its Annex I “Privileges and immunities” and its legal framework, including by PDP Framework available at http://www.esa.int/About\_Us/Law\_at\_ESA/Highlights\_of\_ESA\_rules\_and\_regulations, which shall prevail in particular in case of conflict, ambiguity or inconsistency;

b) any provision of the EU SCC referring a dispute to a national court or another national or international forum is deemed not applicable, given that the Parties agree that:

(i) any Personal Data-related incidents or disputes shall be submitted to the independent Data Protection Supervisory Authority established by ESA Council Resolution, in which case the Rules of Procedure for the Data Protection Supervisory Authority, as set forth ESA PDP Framework, shall apply;

(ii) any other matter giving rise to a dispute shall be referred to arbitration as per Clause 35 of the Contract.

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

(i) annexes of the EU SCC, added to the Contract in particular:

˗ Annex I.A [List of Parties : data exporter/data importer]

˗ Annex I.B [Description of the transfer(s)]

- Annex I.C [Competent Supervisory Authority]

˗ Annex II [Technical and organisational measures, including Technical and Organisational Measures to Ensure the Security].

(ii) the following selected module and options provided by the EU SCC, which are contractually agreed to by the Parties are applicable:

Module One of the EU SCC: Transfer Controller to Controller

**APPENDIX 1: CONTRACT CHANGE NOTICE**

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

* The Contractor’s name and the ESA Contract number;
* The title of the area affected by the change (Work Package reference, new work, etc.);
* The name of the initiator of the change (Contractor or ESA);
* The description of the change (including Work Package Descriptions, Work Breakdown Structure);
* The reason for the change;
* The price breakdown in Euro (€), if any (breakdown by company, Phase, etc., including PSS A2 and PSS A8 forms);
* The Milestone Payment Plan for the CCN, if any;
* Effect on other Contract provisions;
* Start of Work - end of Work (including contractual delivery dates and overall planning, milestones, etc.);
* A CCN Form, as per the format below, signed by the Contractor’s representatives.

The 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:

**[OPTION]**

ARTES-AT-CCN@esa.int

5G-WP-CCN@esa.int

4S-WP-CCN@esa.int

ScyLight-WP-CCN@esa.int

**[END OPTION]**

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:  |
| ESA Contract No.: ***4000XXXXXX/xx/XX/XXX/xxx*** |
|
| CONTRACT CHANGE NOTICE No.        | DATE:       |
| TITLE OF AREA AFFECTED (WORK PACKAGE ETC):       | WP REF:       |
| INITIATOR OF CHANGE:       |
| DESCRIPTION OF CHANGE      |
| REASON FOR CHANGE      |
| PRICE BREAKDOWN (Currency)/PRICE-LEVEL |
| EFFECT ON OTHER CONTRACT PROVISIONS      | START OF WORK       |
| END OF WORK       |
| CONTRACTOR’S PROJECT MANAGER:DATE:  | CONTRACTOR’S CONTRACTS OFFICER:DATE:  |
| [DISPOSITION RECORD OR OTHER AGREED CONDITION RECORDED WITH THE CCN APPROVAL] |
| ESA TECHNICAL OFFICER:DATE:  | ESA CONTRACTS OFFICER:DATE:  |

**APPENDIX 2: CONTRACT CLOSURE DOCUMENTATION**

**(Rev 5: 2018-10)**

for

***ESA Contract No. 4000xxxxxx/xx/XX/XXX/xxx***

***“[INSERT ACTIVITY TITLE]”,***

hereinafter referred as the “Contract”

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

|  |  |
| --- | --- |
| **Contractor** | [CONTRACTOR NAME AND COUNTRY] |
| **Subcontractor(s)**(*state if not applicable*) | [NAME AND COUNTRY] |
| **Contract Duration** | **From**:**To**: | **Phase 1** from: to: |
| **Phase n** from: to: |
| **Total Contract Price**(*including all CCNs, Work Orders, Call of Orders*)and Total Contract Value(*in case of co-funding; state if not applicable*) | **EUR**EUR |
| **Broken down as follows:** | **Original Contract Price**and original Contract Value(*in case of co-funding; state if not applicable*) | **XXX EUR (XXX EUR)**EUR |
| **CCN x to n****Work Order x to n****Call-Off Order x to n**  | **EUR** in total**EUR** in total**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 (**[[4]](#footnote-4)**)** | **Property of** | **Rights granted / Specific IPR Conditions (**[[5]](#footnote-5)**)** |
| **Documentation** |  |  |  |  |  |  |  |
| **Hardware** |  |  |  |  |  |  |  |
| **Software** |  |  | *(Delivery in**Object code /* *Source code?)* |  |  |  |  |
| **Other** |  |  |  |  |  |  |  |

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

The “Contract Inventory” of items produced or purchased under the Contract (other than those falling under the Article 2 of the contract) with an individual or batch cost equivalent or superior to 10,000 Euro is as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  ESA DECISION  |
| Item Name | Part/ Serial Reference Number | Location | Value | Transfer ownership to ESA (delivery at end contract or delivery postponed to end of loan agreement)  | ESA renunciation to claim ownership and delivery(with/without financial compensation or special instructions) | Leave in(Sub-) Contractor’s Custody and postpone transfer of ownership to ESA |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

Table 2.1.3 – Fixed Assets

With regard to Fixed Assets the following declaration is made:

[**OPTION 1**:]

No Fixed Asset has been acquired under the Contract by the Contractor and/or its Subcontractor(s).

[**OPTION 2**:]

Fixed assets, acquired under the Contract by the Contractor and/or its Subcontractor(s) are listed in the List of Fixed Assets attached below. The Contractor certifies that all its obligations with regards to Fixed Assets have been fulfilled. The Agency will inform the Contractor of its decision with respect to the disposal of Fixed Assets items.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  ESA DECISION |
| Item Name | Value | Life time in years | TBD | TBD | Deliver to ESA | Leave under (Sub-)Contractor’s Control  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

Table 2.1.4 – 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 Subcontractor(s) and/or a Third Party(ies) for further ESA work or for other purposes.

Customer Furnished Items

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  ESA DECISION  |
| Item Name | ESA Inventory Number | Location | Insurance Value | 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 |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

**Section 3 – Statement on Intellectual Property Rights generated under the Contract**

**[OPTION 1**: NO Intellectual Property Rights generated under the Contract]

In accordance with the provisions of the above Contract [*insert Contract Number*], [*insert Company name*] hereby certifies both on its own behalf and on behalf of its consortium/Subcontractor(s), that no Intellectual Property Rights (as defined in Annex IV of the General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002, rev. 3, the “GCC”) have been generated in the course of or resulting from work undertaken for the purpose of this Contract.

**[END OF OPTION 1]**

**[OPTION 2**: Intellectual Property Rights generated under the Contract]

The Agency’s rights in the Intellectual Property Rights listed in the table below shall be in accordance with the General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002, rev. 3, the “GCC” - Part II provisions, as amended by the Contract [*insert Contract Number*].

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

|  |  |
| --- | --- |
| **Intellectual Property Rights (“IPR”) suitable for registration (i.e. “Registered Intellectual Property Rights” as per definition in Annex IV of the “GCC”)** | **Current status***[delete non applicable options]* |
| *[insert title of IPR #1 and give a short description]* | Registered :*[insert information on registration granted*]  |
| In the process of being registered:*[insert information on registration process]*  |
| Foreseen for registration:*[indicate timeline]* |
| Not foreseen for registration:*[indicate reason]*  |
| *[insert title of IPR #2 and give a short description]* | Registered :*[insert information on registration granted*] |
| In the process of being registered:*[insert information on registration process]* |
| Foreseen for registration:*[indicate timeline]* |
| Not foreseen for registration:*[indicate reason]* |
|  |  |
| Should any Intellectual Property Rights be indicated as being foreseen for registration or in the process of registration, the Contractor undertakes to notify the Agency's Technical Officer when:- registration of any such IPR(s) is rejected- registration of any such IPR(s) is obtained (and will provide the registration details) |
|  |  |
| **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")** |  |
| *[insert title of corresponding IPR]* | *[give a short description of such IPR]* |
| *[insert title of corresponding IPR]*  | *[give a short description of such IPR]* |

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

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>. [↑](#footnote-ref-1)
2. For detailed information on how to submit and approve confirmations, invoices 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>. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. *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.)* [↑](#footnote-ref-4)
5. *e.g. IPR constraints, deliverable containing proprietary background information (see also 2.1.4 below)* [↑](#footnote-ref-5)