

Contract No. xxxxx/xx/xx/xx

with

[Contractor]

[title]

DRAFT C O N T R A C T

Between:

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

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

through its establishment

European Space Research and Technology Centre

located at: Keplerlaan 1
2201 AZ Noordwijk
The Netherlands

represented by Mr Jean-Jacques Dordain, its Director General,

of the one part,

and:

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

whose Registered Office is at:

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

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

of the other part,

the following has been agreed:

ARTICLE 1 - SUBJECT OF THE CONTRACT - APPLICABLE DOCUMENTS

- 1.1 The Contractor undertakes to perform a study on.....; to deliver the documentation as described herein; and, to make an oral presentation of the results.
- 1.2 The work shall be performed in accordance with the following documents, listed in order of precedence, in case of conflict:
- a) The specific Articles of this Contract and its Appendices 2 (Contract Change Notice), 5 (Payment Plan) and 6. (Ratification of GCC by Italian Companies) on the same level;
 - b) The General Clauses and Conditions for ESA Contracts (herein referred to as GCC), ESA/C/290 Rev 6, not attached hereto but known to both parties, as amended by Article 4 hereunder;
 - c) Appendix 4 hereto: Statement of Invention;
 - d) Appendix 1 hereto: The Statement of Work, ref. ACT-SOW, Rev. 1., dated
 - e) The Specification for the production of ESA Study Contract Reports, not attached hereto but known to both parties, and the standard cover page for the ESA Contract Study Report attached hereto as Appendix 3;
 - f) The Minutes of the negotiation meeting held on, ref.;
 - g) The Contractor's Proposal, reference dated, not attached hereto but known to both parties.

ARTICLE 2 – PRICE

- 2.1 The price of this Contract is a Firm Fixed Price, as defined in Clause 2.1 of Annex I to the ESA GCC amounting to:

... EUR
(... EURO),

[OPTION]

broken down per Contractor as follows:

- ...EUR (...EURO) for [**Contractor**]
- ...EUR (...EURO) for Sub-Contract to [**Sub-Contractor**]
- ...EUR (...EURO) for Sub-Contract to [**Sub-Contractor**]

- 2.2 The above amount does not include any taxes or duties in the Member States of the Agency.

[SUB-OPTION FOR GERMANY]

The price does not include any taxes or duties in the Member States of the Agency other than the German Gewerbeertragsteuer.

- 2.3 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT, in accordance with the INCOTERMS 2000, to the addressees specified in Article 4, Clause 7 of the Contract.

ARTICLE 3 - PLACE AND DATES OF DELIVERY - MEETINGS

3.1 Place and Dates of Delivery

3.1.1 Documents

The Contractor shall, during the performance of this Contract, deliver all documentation and reports specified in Appendix 1 in an electronic file.

These shall be sent to the Agency's Technical Officer mentioned in Article 4, Clause 5, unless otherwise specified, in accordance with the following specific provisions:

- 3.1.1.1 The draft versions of the Final Report and Executive Summary based on the templates provided in Appendix 1 (Annexes E and F to the Statement of Work), shall be submitted for approval, in electronic format to the Agency's Technical Officer specified in Article 4, Clause 7.1 of the Contract, not later than
- 3.1.1.2 The finalised versions thereof shall be issued not later than four (4) weeks after the Agency's approval of the draft versions, as an electronic file (HTML format) allowing the Agency to transfer them into its READ database. Since the contents will be published on the WWW, no proprietary information shall be included.
- 3.1.1.3 On completion of this contract including the delivery of all the above deliverables, the Questionnaire in Appendix 1, (Annex G to the Statement of Work) shall be completed and sent within 1 month to the Agency's contractual representative mentioned in Clause 7.1 of the Contract.

3.2 Meetings

Meetings, reviews and the Final Presentation shall be held as specified in the Applicable Documents listed under Article 1 above.

All meetings, reviews and presentations shall be held as specified below:

<i>Event</i>	<i>Location</i>	<i>Foreseen date</i>

ARTICLE 4 - GENERAL CLAUSES AND CONDITIONS

The General Clauses and Conditions for ESA Contracts, rev. 6 (GCC) shall apply to this Contract, with the following amendments or replacements. The specific conditions in this Contract shall prevail over the GCC.

PART I: CONDITIONS APPLICABLE TO ESA CONTRACTS

CLAUSE 2 - APPROVAL

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

Mr. G. Morsillo (DG-P)
Head of the Director General's Policy Office

CLAUSE 5 - AGENCY'S REPRESENTATIVES - INSPECTIONS

The Agency's representatives are:

1. Mr/Mrs/Ms.....for technical matters or a person duly authorised by him/her. ("Technical Officer");
2. Mrs C. Binedell (RES-PTS) for contractual and administrative matters or a person duly authorised by him/her. ("Contract Officer").

CLAUSE 7 - COMMUNICATIONS

1. All correspondence for the Agency shall be addressed to:

ESTEC
P O Box 299
2200 AG Noordwijk
The Netherlands

- a) For technical matters:

	To:	With copy to: Mrs. C. Binedell
Name		
Phone		
Fax		
e-mail		

- b) For contractual and administrative matters (with the exception of invoices as mentioned in Clause 22):

	To:	With copy to:
Name	Mrs C. Binedell (RES-PTS)	
Phone	+31 (0)71 565 3238	
Fax	+31 (0)71 565 5773	
e-mail	Carla.Binedell@esa.int	

2. All correspondence for the Contractor shall be sent to:

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

- a) For technical matters:

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

- b) For contractual and administrative matters:

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

CLAUSE 10 - EQUIPMENT, SUPPLIES AND TECHNICAL DOCUMENTS MADE AVAILABLE BY THE AGENCY TO THE CONTRACTOR

Clause 10 shall apply to any technical documents which shall be made available by the Agency to the Contract.

CLAUSE 12 - APPLICABLE LAW

The Contract shall be governed by the laws of

CLAUSE 13 - ARBITRATION

The arbitration proceedings shall take place in, in the language of the Contract.

[OPTIONS: APPLICABLE FOR CERTAIN NATIONAL LEGAL SYSTEMS] (FOR SWITZERLAND)

The arbitration proceedings referred to in Clause 13 shall take place in..... [insert location] and be conducted in the language of the Contract.

Notwithstanding the provisions of Clause 13.5, the procedure for the enforcement of the award shall be that of the Civil Procedure Law of the Canton in which the arbitration proceedings take place.

(FOR ITALY)

Notwithstanding Clause 13 the following is agreed:

The arbitration proceedings shall take place in [insert location] and be conducted in the language of the Contract.

Each and every dispute arising from or relating to the interpretation or execution of this Contract shall be submitted to arbitration.

The Arbitration Tribunal shall consist of three (3) persons, one to be appointed by the Contractor, one by the Agency, and the third, who shall be the Chairman, by the two arbitrators so appointed.

Should the two arbitrators be unable to agree upon the nomination of the third, (s)he shall be appointed by the Court of

The arbitrators shall decide according to law, and awards by the Arbitration Tribunal shall be binding on the parties.

The proceedings and the enforcement of the award shall be governed by the Italian Civil Procedure Law.

(FOR SPAIN)

The arbitration proceedings referred to in Clause 13.1 shall take place in [insert location] and be conducted in the language of the Contract.

It is agreed that the arbitration proceedings of the Spanish Arbitration Act 60/2003 dated 23 December 2003 shall govern the arbitration proceedings.

The arbitrators shall decide according to law.

The arbitration award shall be binding on both parties. The Spanish Civil Procedure Law shall govern the enforcement of the award.

CLAUSE 17 - PRICING

Sub-Clauses 17.3 and 17.4 do not apply.

CLAUSE 19 - PACKING AND TRANSPORT EXPENSES

The following provision is added to Clause 19:

All deliverables shall be suitably packed in order to ensure their safety during transportation, and sent to the address designated in Article 4, Clause 7.1. Reference to this Contract and the description of the goods shall be clearly marked on all packages and indicated on all shipping documents.

CLAUSES 20 AND 21 - ADVANCES, PROGRESS AND FINAL PAYMENTS

Clauses 20 and 21 shall be implemented as follows:

1. All payments shall be made according to the provisions hereunder:
 - 1.1 Payments shall be made within thirty (30) calendar days of receipt at ESTEC of the documents listed below and fulfilment of the requirements as specified:
 - 1.2 ADVANCE PAYMENT:

Invoice(s): to be submitted after signature of this Contract by both parties.
 - 1.3 PROGRESS PAYMENT:
 - Invoice(s);
 - Actual achievement of the milestones as defined in the Payment Plan specified in Appendix 4 hereto;
 - 1.4 FINAL SETTLEMENT:

- Invoice(s) to be issued upon acceptance by the Agency of all deliverable items and performance of all tasks under the Contract;
- A Statement of Invention according to the model specified in Appendix 3 hereto.

[OPTION: BASELINE: PAYMENT TO PRIME CONTRACTOR, IF SUB-CONTRACTORS ARE INVOLVED]

- 1.5 *The Agency shall credit the account of the Contractor to its benefit and to the benefit of its Sub-Contractor(s). The Contractor shall be responsible for paying the accounts of its Sub-Contractor(s), for this Contract, in a timely and proper manner, in accordance with the applicable law and commercial practice. The Contractor shall indemnify the Agency against any claims arising from such Sub-Contractor(s), caused by the Contractor's failure to pay same. The Contractor shall supply to the Agency, on request, evidence of payments made to its Sub-Contractor(s).*

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

2. The Payment Plan applicable to this Contract is given in Appendix 4 hereto.
3. If applicable, invoices shall show all due taxes or duties on a separate page.

CLAUSE 22 - INVOICES, PLACE AND CURRENCY OF PAYMENT

Clause 22 shall be implemented as follows:

1. The Contractor is required to submit invoices for all payments due under the Contract.
- 2.1 The Contractor shall ensure that all invoices, are submitted for payment exclusively through the Agency's EFIS system (<http://efis.esa.int>). If the Contractor has no access to the Agency's EFIS system at the time of signature of the present Contract, an immediate request for an EFIS user account shall be made by the Contractor to the ESA Helpdesk (idhelp@esa.int), specifying a contact name, the company name and the ESA Contract number.
- 2.2 However, should the Contractor find the Agency's EFIS System technically inoperative at the moment of submission of the invoices, the Contractor may submit invoices in paper format in five (5) copies to ESA-ESTEC Finance, Central Invoice Registration Office together with justifying documentation as required by the Contract.
- 2.3 The Contractor undertakes to submit complete invoices and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in EFIS.

[OPTION 1: VAT EXEMPTION CERTIFICATE ISSUED]

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 originals of the present Contract for signature. On invoices submitted via EFIS, the number shall be put in the free text field.

[OPTION 2: EXEMPTION UNDER NATIONAL LAW]

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: Aanschrijving O.B.-B.T.W. 90, Staatssecretaris van Financiën, 's-Gravenhage 14 maart 1969, Boekwerk Omzetbelasting - BTW Directie Douane en verbruiksbelastingen Nr. D69/1649.*
3. 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 its bank within the payment period stipulated in Clauses 20 and 21, paragraph 1.1 above.
4. The second sentence of Sub-Clause 22.2 of the ESA GCC is deleted.
5. Any special charges related to the execution of payments will be borne by the Contractor.
6. Any questions concerning the operation of EFIS shall be discussed between the Contractor and the Central Invoice Registration Unit at ESTEC (the Netherlands).

CLAUSE 25 - SUB-CONTRACTS

[OPTION 1]

No Sub-Contracts are foreseen.

[OPTION 2]

Clause 25 shall be implemented as follows:

The Agency agrees that part of the work is sub-contracted to the following companies/organisations:

.....[full name]

CLAUSE 28 - PENALTIES FOR LATE DELIVERIES

Penalties for late delivery shall not apply.

CLAUSE 29 - ACCEPTANCE AND REJECTION

Clause 29 is implemented as follows:

1. As regards documentation and reports, should the Agency's Technical Officer not accept the deliverables from the Contractor, (s)he shall so inform the Contractor with the relevant justification. If no decision has been notified to the Contractor within one month of receipt by the Agency of the deliverables, such shall be considered as having been accepted.
2. Rejected deliverables must be rendered compliant with the Agency's requirements and presented for acceptance within a time scale fixed in writing by the Agency.

CLAUSE 30 - GUARANTEES

Clause 30 shall not apply.

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

For the purpose of this Contract, Part II, Option A of the GCC shall apply.

ARTICLE 6 - ENTRY INTO FORCE AND COMPLETION OF THE CONTRACT
ADDITIONAL SPECIAL CONDITIONS

6.1 Entry into Force, Completion of the Contract

The present Contract shall enter into force upon signature by the duly authorised representatives of both parties hereto. Unless otherwise agreed by the parties or cancelled in accordance with Clauses 31 to 34 of the ESA GCC, the Contract shall run until the completion of the work required thereunder; delivery and acceptance of all deliverable items; proper close-out of any outstanding administrative and financial issues; and, execution by the Agency of the final payment.

The placing of the present Contract shall not be construed as creating any rights to the Contractor for continuation of this Contract or of the Project.

6.2 Continuing Rights and Obligations under the Contract

Completion or cancellation of the present Contract shall not affect the parties' continuing rights and obligations regarding any relevant provisions of this Contract, in particular, those relating to Clauses 9, 14, 15, 16 and Part II of the GCC.

6.3 Special Provisions

Should any part or provision of this Contract be determined to be prohibited, or rendered void or unenforceable, by any legislation or other cause, the remaining terms and conditions of the Contract shall be interpreted in an equitable manner in order to maintain the balance of the parties' respective obligations. The validity and enforceability of the Contract as a whole shall not be affected.

[OPTION]FOR ITALIAN COMPANIES

As regards Clauses 11.2, 13, 14, 15, 24, 25, 31, 33, 34 and 35 of the General Conditions, specific approval is given by signature of Appendix 5.

Done in two originals,

In:

In:

On:

On:

For.....

For the European Space Agency (ESA)

APPENDICES

- Appendix 1: Statement of Work
- Appendix 2: Contract Change Procedure
- Appendix 3: Standard cover page for ESA Contract Study Report
- Appendix 4: Statement of Invention and Inventory
- Appendix 5: Payment Plan

[OPTION]

- Appendix 6: *Ratification of the General Clauses and Conditions (for Italian Companies only)*

APPENDIX 1: STATEMENT OF WORK

CONTRACT CHANGE PROCEDURE

A contract change procedure shall apply for the preparation, evaluation, approval and implementation of alterations to the tasks to be performed under this contract.

1. INTRODUCTION OF A CHANGE

For all changes, whether requested by the Agency or initiated by the Contractor, the Contractor shall submit a proposal for a Contract Change Notice (CCN) on the form attached hereto. The CCN shall be filled in completely, and boxes or lines which are not applicable shall be so designated by use of the letters "NA". The form shall be signed by the Contractor's authorised representative(s) and submitted to the Agency's Contracts Officer.

The Contractor shall ensure that each change proposal is fully coordinated and that all reasonably foreseeable implications of the change have been considered. If the space on the form is not sufficient to describe the change and its consequences, the additional information shall be annexed to the form. The Contractor shall, on request of the Agency, provide additional documentary evidence.

2. APPROVAL OR REJECTION OF THE CONTRACT CHANGE NOTICES

Upon receipt of a CCN signed by the Contractor the Agency shall consider it as regards its acceptability. Should the CCN be approved, it will be signed by the Agency's authorised Technical Representative and Contracts Officer, and a copy returned to the Contractor. Should a CCN be rejected for any reason, the Contractor shall be informed accordingly, together with the reasons for the rejection. At the request of either party, the change may be discussed at a Change Review Board, consisting of a Contractual and a Technical Representative of each party.

3. IMPLEMENTATION AND STATUS OF APPROVED CHANGE NOTICES

Upon signature of a CCN by both parties, the CCN has immediate effect and constitutes a binding contractual agreement. The Contractor shall implement the change in accordance with the implementation dates agreed.

If the Agency considers it necessary, approved CCN's may subsequently be integrated into a Rider to the Contract.

<u>CONTRACT CHANGE NOTICE - SPECIMEN</u> Contractor: Contract No:	
Title of area affected (work package, MUP, etc)	WP Ref: MUP 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
<u>CONTRACTOR</u>	
Project Manager	Date
Contracts Officer	Date
<u>ESA</u>	
Technical representative	Date
Initiator approval	Date
Contracts Officer	Date

OVER PAGE FOR ESA STUDY CONTRACT REPORTS

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

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

APPENDIX 4: STATEMENT OF INVENTION

Contract Number:
Contract Subject:

Date:

STATEMENT OF INVENTION

Inventions

[OPTION 1] NO INVENTION

In accordance with the provisions of the above Contract,[Company] hereby certifies both on its own behalf and that of its consortium/Sub-Contractor(s), that no Intellectual Property Right(s) has(ve) been registered in the course of or resulting from work undertaken for the purpose of this Contract.

[OPTION 2] INVENTION

In accordance with the provisions of the above Contract,[Company] hereby certifies both on its own behalf and that of its consortium/Sub-Contractor(s) that the following Intellectual Property Right(s) has(ve) been registered in the course of or resulting from work undertaken for the purpose of this Contract:

.....
.....

The Agency's rights on such Registered Intellectual Property Rights shall be in accordance with the ESA GCC Part II provisions, as amended by the above Contract.

APPENDIX 5: PAYMENT PLAN

(Note: the plan can also be imported from EFIS)

Milestone Description	Schedule Date	Amounts in Euro	
		Payments from ESA to Contractor	Payments from Contractor to Sub-Contractor
ADVANCE PAYMENT: Upon signature of the Contract by both parties (maximum according to GCC 35%)			
FINAL SETTLEMENT: Upon the Agency's acceptance of all deliverable items and successful completion by the Contractor of all tasks due under the Contract			

APPENDIX 6: RATIFICATION OF THE GCC

(FOR ITALIAN COMPANIES ONLY)

The Contractor certifies that it specifically approves the following Clauses of the General Conditions:

- Clause 11.2: Compensation for Damage caused to persons, goods or property
- Clause 13: Arbitration
- Clause 14: Infringements of the law
- Clause 15: Infringements of third-party rights
- Clause 24: Transfer of the Contract
- Clause 25: Sub-Contracts
- Clause 31: Cancellation - General Rule
- Clause 33: Cancellation with fault of the Contractor
- Clause 34: Cancellation in special cases
- Clause 35: Provisions to be observed in Sub-Contracts as to cancellation

On behalf of the Contractor,

on this day.....

.....