



ESA Unclassified – For Official Use

Appendix 2 to AO/1-7712/13/I-AM

ESA/Contract No. 4000XXXX/13/I-AM
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OCEAN HEAT FLUX

ESA/Contract No. 4000XXXXXX/13/I-AM

with

xxxx



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DRAFT C O N T R A C T

Ocean Heat Flux

Between:

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

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

represented by Mr Jean-Jacques Dordain, its Director General,
acting through its establishment

ESRIN,

located at: Via Galileo Galilei
00044 Frascati
Italy

of the one part,

and:

xxx

(hereafter called “**the Contractor**”),

whose Registered Office is at:

represented by Mr/Ms xxx, its xxxx,

of the other part,

the following has been agreed:



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ARTICLE 1 - SUBJECT OF THE CONTRACT - APPLICABLE DOCUMENTS

- 1.1 The Contractor undertakes to:
- 1.1.1 Respond to the question: “How much heat is entering the global ocean?”. In addressing this question, the Contract shall capitalize on the latest knowledge in algorithms and data sets from independent observing systems, such as satellites and Argo floats;
- 1.1.2 Foster the use of Earth Observation (**EO**) data, with a focus on ESA missions and programmes, to improve European flux data sets;
- 1.1.3 Generate an ensemble of turbulent fluxes to better sample the different components of the uncertainty;
- 1.1.4 Evaluate the quality of the flux products, and assess their consistency through independent integral constraints at different local, regional and global scales when possible;
- 1.1.5 Develop a Flux Data Portal, in collaboration with SeaFlux and other relevant partners, to access, process, share and foster the use of the data sets with the flux user community.
- 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 the following appendices, which are on the same level as the Contract:
- Appendix 1 - Payment Plan and Advance Payment(s) and other financial conditions;
 - Appendix 4 - Contract Change Notice Procedure; and
 - Appendix 5 - List of Background Intellectual Property Rights (BIPR) Approved for Use During the Contract.
- b) The General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002 rev.1 (**the GCCs**), as supplemented and amended by this Contract. The GCCs are not attached hereto but are known to both parties and are available on <http://emits.sso.esa.int>, under the links “Reference Documentation”/“Administrative Documents”;
- c) Appendix 2: the Agency’s Statement of Work ‘Ocean Heat Flux’, ref. EOP-SA/0261/PPM-ppm, issue 1, rev. 10, dated 7 November 2013 (**the SoW**);
- d) The minutes of the negotiation meeting held on xxx at xxx; and
- e) The Contractor’s Proposal ‘xxxx’, ref xxxx, issue xx, rev. xxx (**the Proposal**). The Proposal is not attached to the Contract but is known to both parties.

Any amendments which the Contractor has proposed in the Proposal which could impact these contractual provisions do not apply to the Contract, unless they have been reproduced directly in the text of the Contract below.

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

The Contractor shall, during the performance of this Contract, deliver all documentation and reports as specified in the SoW, in the number of paper and electronic copies required by the Agency’s Technical Officer (nominated in Article 4, Paragraph 5.1(a) below).

The Contractor shall also deliver one (1) paper copy of the Final Report and Executive Summary and one (1) copy on CD-ROM or USB stick, by no later than KO+14 months, to the ESA Information and Documentation Centre – ESTEC library, Postbus 299, 2200 AG, Noordwijk, The Netherlands.

2.1.2 Contract Closure Documentation

The Contractor shall attach a complete set of the Contract Closure Documentation (**CCD**) (see Appendix 3 below) to the Milestone Achievement Confirmation (**MAC**) which it submits in esa-p for the final payment (see also Article 3.2 below). If the Agency’s esa-p system is not working in the period during which the Contractor wishes to submit its invoice for the final payment, the Contractor shall email an electronic copy of the completed and signed CCD to the Agency’s Representatives, before it submits its invoice for the final payment. The final payment shall not be payable until the Agency’s Technical Officer has approved the CCD, in addition to approving all deliverables due under the SoW.

2.2. Meetings

- 2.2.1. In addition to participating actively in the meetings scheduled in accordance with Section 4.1 of the SoW, the Contractor and its subcontractors shall, provided the Agency gives due notice (at least five working days), also attend any additional meeting or review which the Agency requests, and the Contractor shall ensure that all those individuals participate whose attendance is appropriate in light of the topic of the meeting or review.
- 2.2.2. The Contractor shall be responsible for drafting, circulating and finalising the agenda for and the minutes from all meetings between the Contractor and the Agency. Minutes from all meetings must be signed by a minimum of one representative from each party to the Contract, and a copy of the signed minutes sent to the contracts officer for each party to the Contract. If one party has not signed the minutes within 30 working days of the date of the meeting, the minutes shall nevertheless become binding.

ARTICLE 3 – PRICE & PAYMENT

3.1 Price

3.1.1 The **Firm Fixed Price (FFP)** (as defined in as defined in Annex II: Section 2.1 of the GCCs) for the Contract is:

... EURO
(... EURO)

The FFP shall cover all of the costs which the Contractor incurs in carrying out all work necessary to fulfil the requirements of the SoW.

The FFP is broken down per entity involved in the project as follows:

Organisation	Esa-p Vendor Code	Country	Amount (EURO)
Contractor			
Sub...			
Total FFP			

3.1.2 Licence Costs
The FFP includes, and the Contractor shall pay all costs associated with the purchase of all of the licences which the Contractor has indicated in the Proposal will be purchased under the Contract, or which become necessary to be purchased during the Contract, and any and all licence fees which are payable under Clause 43.7 of the GCCs. Each licence shall indicate the Agency as the intended end-user.

The FFP also includes, and the Contractor shall pay all other costs associated with use of licensed software for the purposes of the Contract.

- 3.1.3 The prices do not include any taxes or duties in the Member States of the Agency.
- 3.1.4 The prices are Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS 2010, to the addressee(s) specified in Article 4, Paragraph 5.1(a) below. Reference to Incoterms in this provision is exclusively for the price definition.

3.2 Payment

- 3.2.1 The Milestone Payment Plan (**MPP**) for the Contract is set out in Appendix 1 below.

The payments shown in the MPP shall be made in accordance with the following provisions:

- 3.2.2 Payments shall be made within thirty (30) calendar days of receipt at ESA-ESRIN Finance Payment Office both of the documents listed in Paragraphs 3.2.3 – 3.2.5 below and of evidence that the Contractor has fulfilled the requirements specified at Paragraphs 3.2.3 – 3.2.5 below.

3.2.3 Advance Payment:

- Advance Payment Request: to be submitted after signature of this Contract by both Parties.

3.2.4 Progress Payment:

- Milestone Achievement Confirmation (**MAC**) with supporting documentation as necessary;
- Invoice(s);
- Actual achievement of the milestones defined in the MPP at Appendix 1 below.

3.2.5 Final Settlement:

- MAC;
- Invoice(s);
- Receipt and/or final acceptance, by the Agency, of all deliverable items, of the services to be rendered and other obligations to be fulfilled, in accordance with the terms of this Contract;
- The Contract Closure Documentation, using the template provided in Appendix 3, Annex A below.

- 3.2.6 The Contractor also undertakes to provide further supporting documentation, such as Summary Cost Reports or Quarterly Financial reports etc., as required by the Contract, with the electronic invoices and MACs.

3.2.7 Partial Payments

In cases where a milestone is not achieved or partially achieved the Agency may, at its discretion, withhold payments in part or in full, until the milestone has been achieved. Such withholding of payment shall not give rise to any claim from the Contractor concerning financial losses due to such withholding.

The Contractor is allowed to request partial payment for a partially completed milestone, by submitting an invoice which is supported by a MAC stating the degree of partial achievement, which has been decided with the Agency's Technical Officer according to agreed milestone achievement criteria. The partial payment for a partially achieved milestone may be requested prior to the scheduled date which is shown in the MPP for achievement of the milestone, and shall represent a percentage of the milestone amount which is shown in the MPP, with such percentage corresponding to the degree of achievement of the respective milestone at the time of the invoice. If the Agency, in its reasonable judgment, determines that the partial payment is appropriate under the circumstances, and if the Contractor has complied with the other provisions of this Article 3, then the Agency shall make such partial payment, and the remainder of the corresponding milestone payment shall be paid at such time as the milestone has been fully achieved.

3.2.8 [if subcontractors are proposed] Payments to subcontractors

3.2.8.1 The Agency shall credit the account of the Contractor to its benefit and to the benefit of its subcontractors.

3.2.8.2 The Contractor shall be responsible for paying the accounts of its subcontractors for the Contract in a timely and proper manner in accordance with the applicable law and commercial practice, and in no event shall the Contractor pay the subcontractors later than 10 business days after it has received in its account the relevant funds from ESA.

3.2.8.3 The Contractor shall indemnify the Agency against any costs or loss which the Agency incurs as a result of the Contractor's failure to pay its subcontractors within 10 business days of receiving into its account the relevant funds from ESA.

3.2.9 a) the Contractor shall ensure that all invoices, MACs and Advance Payment Requests 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: IDHelp@esa.int), specifying a contact name, the company name, and the ESA Contract number.

b) (i) Should the Contractor find the Agency's esa-p system technically inoperative at the moment of submission of the invoices or Advance Payment Requests, the Contractor may submit invoices or Advance Payment Requests in paper format, in five (5) copies to the ESA-ESRIN Finance Payment Office, together with justifying documentation as required by the Contract.

(ii) In cases where the Agency's esa-p system is inoperative at the moment of submission of the MAC, the Contractor may submit the MAC in paper format in three (3) copies to the Agency's Technical Officer. A template MAC form can be obtained upon request to IDHelp@esa.int.

c) The Contractor undertakes to submit complete invoices, MACs and Advance Payment Requests and to adhere strictly to the instructions (including those for billing taxes and duties, where applicable) contained in esa-p.

3.2.10 Invoices shall clearly and separately show any applicable taxes or duties which are included in the invoice.

3.2.11 In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to Law Nr. 358 of 9/6/1977 – Gazzetta Ufficiale Numero 184 of 7/7/1977 and shall indicate the serial number indicated on the VAT Exemption Form which the Agency provided to the Contractor when forwarding two (2) originals of the present Contract for signature. On all invoices/Advance Payment Requests submitted, the number shall be put in the respective field 'VAT Exemption Number'.

3.2.12 Payments shall be made by the Agency in EURO to the account specified by the Contractor. Such 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 3.2.2 above.

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

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

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

ARTICLE 4 – SUPPLEMENTS AND AMENDMENTS TO THE GCCs

The GCCs apply to this Contract with the following additional provisions and amendments:

[For UK Contractors only] Where the term ‘Gross Negligence’ appears in the GCCs, it shall mean that the care required to be shown in the conduct of everyday business is breached to a particularly severe degree, specifically that no attention is paid to obvious considerations nor to that which would be apparent to any person finding himself in that situation.

PART I: CONDITIONS APPLICABLE TO ESA CONTRACTS

CLAUSE 2: APPROVAL AND ENTRY INTO FORCE

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

Mr Maurice BORGEAUD,
Head of the EO Science, Applications & Future Technologies Department (EOP-S),
Directorate of Earth Observation Programmes.

The Contract shall enter into force on the signature of the duly authorised representatives of both parties, and shall cover all activities from the date of the kick-off meeting, i.e. **[date to be inserted]**.

The Contract activities shall be completed no later than **twenty-four (24) months** from the date of the kick-off meeting.

CLAUSE 5: THE PARTIES’ REPRESENTATIVES

5.1 The Agency’s representatives

The Agency’s Representatives are:

- a) XXX (EOP-XX), for technical matters or a person duly authorised by him/her (**The Agency’s Technical Officer**).

All correspondence for technical matters will be addressed to:

	To:	With copy to:
Name		Miss A Madden
Address	ESRIN - EOP-XX Via Galileo Galilei Casella Postale 64 00044 Frascati Italy	PFL-POE
Phone	00 39 06 941 80 XXX	
Fax	00 39 06 941 80 XXX	
e-mail	XXX@esa.int	

- b) Miss Alex Madden (PFL-POE), for contractual and administrative matters, or a person duly authorised by her (**the Agency’s Contract Officer**).

All correspondence for contractual and administrative matters (with exception of invoices, for which all queries shall be sent to IDHelp@esa.int) shall be addressed to:

	To:	With copy to:
Name	Alex Madden	Xxx (EOP-xx)
Address	ESRIN - PFL-POE Via Galileo Galilei Casella Postale 64 00044 Frascati Italy	
Phone	00 39 06 941 80 453	
Fax	00 39 06 941 80 382	
e-mail	Alex.madden@esa.int	

5.2 The Contractor's Representatives

The Contractor's Representatives are:

- a) XXX, for technical matters or a person duly authorised by him/her (**the Contractor's Technical Officer**).

All correspondence for technical matters will be addressed to:

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

- b) XXX, for contractual and administrative matters or a person duly authorised by him/her (**the Contractor's Contract Officer**).

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

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

CLAUSE 9: KEY PERSONNEL

The Contractor's key personnel are listed in **Section XX of the Proposal (the Key Personnel)**.

CLAUSE 10: SUB-CONTRACTS

Option 1: No subcontracts are foreseen.

Option 2: The Agency agrees that, in accordance with the Proposal, the Contractor shall subcontract part of the work under the Contract to the subcontractors listed in Article 3.1 above.

CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)

It is not foreseen that the Agency will make available to the Contractor any CFIs which have an insurable value.

CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY

It is not foreseen that the Agency will make available to the Contractor any items to which Clause 12 of the GCCs would apply.

CLAUSE 13: CHANGES

A template for the Contract Change Notice (CCN) which is referred to in Clause 13 of the GCCs is attached at Annex 1 to Appendix 4 below.

The procedure for resolving a disagreement regarding a CCN, including the composition of the Change Review Board, is set out at Appendix 4 below.

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

The following paragraph is added to Clause 15 of the GCCs as sub-Clause 15.3.6:

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

CLAUSE 16: ACCEPTANCE AND REJECTION

The written Acceptance Procedure envisaged in Clause 16.3 shall be as follows:

1. Should the Agency's Technical Officer not accept any of the Deliverables from the Contractor, he shall inform the Contractor which of the Deliverables he does not accept and shall provide reasons for his decision.
2. In relation to documents and reports, if the Agency's Technical Officer does not notify the Contractor within one month of the date the Agency receives the deliverables that it does not accept those or some part of those deliverables, those deliverables shall be considered as having been accepted.
3. Rejected Deliverables must be rendered compliant with the Agency's requirements and resubmitted for acceptance within a time scale fixed in writing by the Agency.

CLAUSE 17: PENALTIES/INCENTIVES

Penalties for late delivery do not apply to this Contract.

CLAUSE 34: APPLICABLE LAW

The substantive law referred to in Clause 34 of the GCCs is the law of [*insert name of Contractor's country*].

CLAUSE 35: DISPUTE RESOLUTION

The arbitration tribunal shall have its seat in [*insert name of Contractor's country*], and the arbitration proceedings shall take place in [*insert name of city where Contractor has registered office address*].

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

For the purpose of the Contract, Part II, Option A of the GCCs shall apply, as modified by the special provisions below.

The free licences provided for the benefit of ESA here below and in Part II of the GCCs shall be deemed granted through signature of the Contract, without the need to implement a separate licence.

The following further supplemental provisions and amendments are made to the GCCs:

CLAUSE 37 – INFORMATION TO BE PROVIDED

The following provisions are added as sub-Clause 37.5:

The Contractor shall take all reasonable steps to make all data products, algorithms (including, where relevant and with the permission of the data product/algorithm owners, any pre-existing data products and algorithms), methods developed and validation analysis reports used during and developed under the Contract freely and widely available to the public, and in particular to the international scientific community, as quickly as possible (within the limits imposed by the need to have the information internationally peer reviewed), throughout the duration of the project.

The Contractor shall, throughout the project, actively foster international scientific cooperation, independent peer review and independent scrutiny and validation of all algorithms, documents, data products, results and validation analysis reports used during and generated under the Contract.

The Agency is also entitled to make freely and publicly (including by means of a publicly accessible website) available the algorithms, documents, data products, results and validation analysis reports which are generated under the Contract, in particular to scientific communities and any organisations which may evaluate them, contribute to their validation, report on their use and promote the benefits of their utilisation.

CLAUSE 38 – DISCLOSURE

The following provisions are added to sub-clause 38.2:

The access rights granted to the Agency's employees under sub-clause 38.2 are hereby extended to contractors hired by ESA to provide technical, management, legal or administrative support to ESA, provided they have first signed an engagement of confidentiality.

The Contractor shall not mark any documents as "Proprietary Information" unless it has been agreed in advance with the Agency that they can be so marked. Any request from the Contractor shall be accompanied by an appropriate justification for the request.

CLAUSE 41 – USE OF INTELLECTUAL PROPERTY RIGHTS

The following provisions are added to Clause 41:

The Contractor shall mark any Product, irrespective of the form in which it is produced, as follows: "Developed under ESA STSE 'Ocean Heat Flux' Project".

The Contractor shall not claim copyright over any information placed on the project website. The Agency and any other users of the project website shall be entitled to make any use they wish of all or any part of the information placed on the project website. Such use shall include, for example, transferring the information to another publicly accessible website, irrespective of the ownership of that website.

Moreover, the Contractor is entitled to grant and does hereby grant the Agency and states participating in the 4th period of the Agency's Earth Observation Envelope Programme (**EOEP-4**), without the need to implement a separate licence agreement, a free, unlimited, non-exclusive, worldwide licence, **with the unrestricted right to grant sub-licences on the same terms**, to use, copy, modify and publicly disseminate the project deliverables and the data products, algorithms, documents, methods, results and validation analysis reports used during and generated under the Contract.

Waiver of Moral Rights

The Contractor shall secure by agreements with those of its employees who have worked on the project, that those employees have waived their right to be named as an author of any information shown on the project website and have waived all their other moral rights in regard to the information on the project website, e.g. the right of an author to have access to its work.

If a waiver of a moral right of an author is legally not possible, the Contractor shall secure by written agreements with its employees that the employees waive their rights to execute such moral right for the maximum period of time legally possible.

The same shall apply for all free-lance workers and employees of the Contractor's subcontractors and the Contractor must obtain such waivers in written agreements with any free-lance workers and employees of its subcontractors.

CLAUSE 43 – BACKGROUND INTELLECTUAL PROPERTY RIGHTS

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

- a) The Background Intellectual Property Rights (**BIPR**) and other Intellectual Property Rights (**IPR**) which shall be used during the project, and the conditions on which they can be used, both during the project and after the project's conclusion, are listed at Appendix 5 below.
- b) The use of any other BIPR or other IPR (irrespective of whether it is owned by a third-party or by a member of the Contract consortium) for the development of the deliverables under this Contract is only permitted if the Agency gives the Contractor its prior written approval for the use.

If the Agency approves the use of further BIPR/IPR, the Agency shall issue a CCN to authorise the use and to add a description of the BIPR/IPR and the related conditions of use to the list at Appendix 5.

- c) The Contractor guarantees and shall at all times ensure that the use of any BIPR and or other IPR during the project will not in any way limit the free licence which is granted to the Agency and the EOEP-4 Participating States under Clause 41 of the GCCs, as supplemented above, or the free use of information placed on the project website.

Sub-Clauses 43.4 and 43.7:

For the purpose of Sub-Clauses 43.4 and 43.7, the term "Agency Project" shall refer to all present and future activities/projects of the Agency for which the results of the Contract or the Contract deliverables are relevant.

CLAUSE 49 - TRANSFER OUTSIDE THE MEMBER STATES

The request for a transfer outside the Member States shall be addressed to the Agency's Technology and Product Transfer Board via the Secretary of the Board, Legal Department, ESA Headquarters, 8-10 rue Mario Nikis, 75015 Paris, with a copy to the technical and administrative representatives of the Agency identified in Article 4, Paragraph 5.1.

The terms of Clause 49 shall not be construed as restricting the Agency's right to disseminate information and documents to non-Member States as specified in Sub-Clause 37.4 bis b) above.

ANNEX IV: DEFINITIONS

The term "documentation" shall also include data files, CAD files, EXCEL files and similar electronic files, which shall not be considered as "software" in the sense of Clause 42.

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

ARTICLE 5 – ITEMS PRODUCED OR PURCHASED UNDER THE CONTRACT – FIXED ASSETS

5.1 The following provisions apply to any items other than those which Article 2 of the Contract specifies must be delivered to the Agency, or which are included in a list of deliverable items referred to in Article 2.

5.2 The title to the property of any items produced under the Contract, including satellite data and test equipment, and paid for by the Contract, with an individual or batch value in the national currency equivalent to or above **5.000** Euros, shall pass to the Agency unless otherwise decided by the latter.

As a result, all such items are to be delivered to the Agency at the end of the Contract; they might be delivered at an earlier stage if so requested by the Agency without this causing a problem to the Contractor for completing the work specified in the Contract.

5.3 The Contractor shall maintain, using the format shown in Appendix 3, an inventory of all such items (**the Contract Inventory**) and shall mark those items as falling under this Article.

The Contract Inventory shall be updated and made available to the Agency during the execution of the Contract. A final issue of the Contract Inventory shall be submitted with the final contractual deliverables, as foreseen in Appendix 3, Table 2.1.2.

If the Contract Inventory includes any of those items which fall within the scope of Article 2 of the Contract, the latter are to be clearly set apart.

5.4 Upon completion of the work specified in the Contract, the Agency shall take decisions regarding the final destination and the final ownership 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 from the following options, with respect to final destination and to final ownership:

- a) the right to claim delivery to the Agency and the transfer of ownership to the Agency – with issue of appropriate instructions concerning packing and shipment (at the Contractor's expense);
- b) the right to claim transfer of ownership and to negotiate with the Contractor a loan agreement, if the latter 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 their risks (at the Contractor's expense);
- c) the right to extend the custody of an item by the Contractor (for instance: as a preservation 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 ask 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.

5.5 The Contractor shall comply with the Agency's instructions and with the decision which the Agency takes in relation to paragraph 5.4 above.

5.6 This process will be recorded using the format of the Contract Closure Documentation shown in Appendix 3 below.



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Done and signed in two original copies, one for each party to the Contract,

On behalf of the Agency, in Frascati,

On behalf of the Contractor, in

on this day,

on this day,

.....
Mr Maurice BORGEAUD,
Head of the EO Science, Applications & Future
Technologies Department

.....
[insert name and role of Contractor's signatory]

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

Section 1 – Firm Fixed Price Milestone Payment Plan

The Agency shall make payments (in EURO) to the Contractor, on the following conditions:

Milestone Description	Scheduled Date	Total EUR
Progress Payment 1 (including the Advance Payment): upon the Agency's acceptance of tbd deliverables	KO+	
Progress Payment 2: upon the Agency's acceptance of tbd deliverables	KO+	
Progress Payment 3: upon the Agency's acceptance of tbd deliverables	KO+	
Final Payment: upon acceptance by the Agency of the tbd deliverables and all other deliverables due under the Contract	KO+24	
Total:		

ADVANCE PAYMENT

If requested by the Contractor to do so, the Agency will make the advance payment shown in the table below. In order to request the advance payment, the Contractor must submit an Advance Payment Request (**APR**) in esa-p. The advance payment shall constitute a debt of the Contractor to the Agency until it has been set-off against Progress Payment 1.

Name	Vendor Code	Advance Payment (€)	Off-Setting against	Condition of payment
Contractor		.. (max. 15% of FFP)	Progress Payment 1	Request to be made after signature of Contract, by submitting an APR in esa-p



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APPENDIX 2: STATEMENT OF WORK

**The Agency's Statement of Work 'Ocean Heat Flux', ref. EOP-SA/0261/PPM-ppm, issue 1,
rev. 10, dated 7 November 2013**



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APPENDIX 3

CONTRACT CLOSURE DOCUMENTATION

APPENDIX 3: CONTRACT CLOSURE DOCUMENTATION

for

ESA/ESRIN Contract Nr. [INSERT NUMBER]

“[INSERT ACTIVITY TITLE]”,

hereinafter referred as the “Contract”

Section 1 – Parties, contract duration and financial information

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

Section 2 – Recapitulation of deliverable items

2.1 Items deliverable under the Contract

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

Table 2.1.1 – **Items deliverable according to the Statement of Work**

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

Table 2.1.2 – **Other deliverable items: Inventory of items produced or purchased under the contract** (if applicable)

[**OPTION 1:** No Fixed Assets]

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

[**OPTION 2:** Fixed Assets]

Any fixed assets, acquired under the Contract by the Contractor and/or its Sub-Contractors 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.

Item name	Part/ Serial reference number	Location	Value	ESA DECISION •		
				Deliver to ESA	Sell or Dispose of	Leave in (Sub-) Contractor's Custody

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

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

- To be completed by ESA

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

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

Customer Furnished Items

Item name	ESA Inventory Number	Location	Insurance Value	ESA DECISION		
				Confirmation of Receipt	Deliver	Leave at (Sub-) Contractor's Disposal

Items made available by the Agency

Item name	ESA Inventory Number	Location	Replacement Value	Deliver	Leave at (Sub-) Contractor's Disposal

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

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

Proprietary Information (title, description)	Owner (Contractor, Sub-Contractor(s), third party/ies)	Affected deliverable (which documents, hardware, software, etc.)	Description impact on ESA's rights to the deliverable ³	Other/comments

Section 3 – Output from / achievements under the Contract

3.1 **Technology Readiness Level (TRL)**

Indicate the TRL of the technology developed under the Contract using the classification given below.

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

Initial TRL	Planned TRL as activity outcome	Actual TRL at end of activity

1	Basic principles observed and reported
2	Technology concept and/ or application formulated
3	Analytical and experimental critical function and/ or characteristic proof of concept
4	Component and /or breadboard validation in laboratory environment
5	Component and /or breadboard validation in relevant environment
6	System/ subsystem model or prototype demonstration in a relevant environment
7	System prototype demonstration in an operational environment
8	Actual system completed and 'flight qualified' through test and demonstration
9	Actual system 'flight proven' through successful mission operations

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

3.2 Achievements and Technology Domain

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

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

1	On-Board Data Systems	14	Life & Physical Sciences
2	Space System Software	15	Mechanisms & Tribology
3	Spacecraft Electrical Power	16	Optics
4	Spacecraft Environment & Effects	17	Optoelectronics
5	Space System Control	18	Aerothermodynamics
6	RF Payload and Systems	19	Propulsion
7	Electromagnetic Technologies and Techniques	20	Structures & Pyrotechnics
8	System Design & Verification	21	Thermal
9	Mission Operations and Ground Data Systems	22	Environmental Control Life Support
10	Flight Dynamics and GNSS	23	EEE Components and Quality
11	Space Debris	24	Materials and Processes
12	Ground Station System & Networking	25	Quality, Dependability and Safety
13	Automation, Telesence & Robotics		

3.3 Application of the output/ achievements

Please tick off as appropriate:

Possible use in programme:

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

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

Actual use in programme:

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

3.4 **Further steps/expected duration**

Please tick off as appropriate:

- No further development envisaged.
- Further development needed:

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

3.5 **Potential non-space applications**

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

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

Section 4 – Statement of Invention

[**OPTION 1: NO INVENTION/no IPR generated**]

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 and/or generated in the course of or resulting from work undertaken for the purpose of this Contract.

[**OPTION 2: INVENTION/IPR generated**]

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 generated [and registered] in the course of or resulting from work undertaken for the purpose of this Contract.

.....

[**OPTION**]: 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 inventions have been made in the course of or resulting from work undertaken for the purpose of this Contract but have not been registered as Intellectual Property Rights:

.....

[**OPTION**]: 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 inventions have been made in the course of or resulting from work undertaken for the purpose of this Contract and are foreseen for and/or in the process of registration:

The Agency's rights on such registered and/or unregistered Intellectual Property Rights shall be in accordance with the ESA GCC Part II provisions as amended by the above Contract.

APPENDIX 4: CONTRACT CHANGE NOTICE PROCEDURE

1. A template for the Contract Change Notice (**CCN**) which is referred to in Clause 13 of the GCCs is attached at Annex 1 below.
2. At the request of either party, a proposal for a CCN may be discussed at a Change Review Board (**CRB**), which shall consist of the project managers from both parties (or their delegated authorities), and the contracts officers from both parties. The function of the CRB shall be to review and decide upon all CCNs submitted to it. The members of the CRB may be assisted by specialists of their own staff or the staff of their subcontractors.
3. The Service Provider shall make available to the CRB all data required to enable the CRB to make a complete evaluation of the implications of any proposed change.
4. When examining a CCN, the CRB shall either reach agreement on the content of the CCN, or draw up a statement of disagreement. When agreement is reached, the Agency and the Service Provider shall sign the CCN. If no agreement on the CCN is reached, a statement of disagreement shall be recorded, and the matter shall be submitted to the Change Appeal Board (**CAB**), unless either party agrees in writing to accept the other's point of view.
5. The CAB shall consist of 2 high-level representatives of each party, who shall be nominated by the Agency and the Service Provider through an exchange of letters. One representative from each party shall be from the technical side, the other from the administrative side.
6. Within 2 months of the submission of the dispute, or such longer time as the Parties may agree, the CAB shall either reach agreement or establish that a disagreement continues to exist. In the latter case, either party may submit the disagreement to arbitration, in accordance with the procedure provided for in Clause 35 of the GCCs (as supplemented in Article 6 above).
7. The Agency or the Service Provider may also submit any other dispute relating to this Contract to the CAB.

Annex 1

Contract Change Notice (CCN) Template



europaean space agency

ORIGINAL

Contract Change Notice (CCN) No:		DATE:	
TO CONTRACT No:		esa-p CCN No:	
CONTRACTOR: (the Contractor)			
TITLE OF AREA AFFECTED: (the Contract)		INITIATOR OF CHANGE:	
DESCRIPTION OF CHANGE:			
REASON FOR CHANGE:		START OF WORK:	
		END OF WORK:	
PRICE TYPE: FFP		AMOUNT OF CHANGE +/- (EURO):	
EFFECTS ON OTHER CONTRACT PROVISIONS: All terms and conditions of the Contract and its CCNs/WOs which are not modified by the current CCN remain applicable and in force.			

e

CONTRACTS OFFICER:
DATE:

CONTRACTOR	
PROJECT MANAGER:	CONTRACTS OFFICER:
DATE:	DATE:



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Appendix 2 to AO/1-7712/13/I-AM

Appendix 5 to ESA/Contract No. 4000XXXX/13/I-AM
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APPENDIX 5

**LIST OF BACKGROUND INTELLECTUAL PROPERTY RIGHTS (BIPR) APPROVED FOR
USE DURING THE CONTRACT**