

**ESA Contract No.
4000114410/15/NL/BW**

with

**Istituto Nazionale di Astrofisica
(INAF)- Osservatorio Astronomico
di Brera (OAB)**

**Silicon Pore Optics modelling and
simulations**



CONTRACT

Between:

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

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

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

through its establishment

The European Space Research and Technology Centre (ESTEC),

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

of the one part,

and:

**Istituto Nazionale di Astrofisica (INAF)- Osservatorio Astronomico di
Brera (OAB)**

(hereinafter called “the Contractor” or “INAF-OAB”),

whose Registered Office is at:
viale del Parco Mellini
84-00136 Roma
Italy

represented by Dr. Umberto Sacerdote, INAF Director General,

of the other part,

the following has been agreed:



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TABLE OF CONTENTS:

ARTICLE 1 - SUBJECT OF THE CONTRACT – APPLICABLE DOCUMENTS..... 5
 1.1. Subject of the Contract 5
 1.2. Applicable Documents..... 5

ARTICLE 2 - DELIVERY..... 7
 2.1. Place and Dates of Delivery 7

ARTICLE 3 - PRICE & PAYMENT..... 10
 3.1. Price..... 10
 3.2. Payment..... 11

**ARTICLE 4 - ITEMS PRODUCED OR PURCHASED UNDER THE CONTRACT –
 FIXED ASSETS..... 15**

ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC 17
 CLAUSE 2: APPROVAL AND ENTRY INTO FORCE 17
 CLAUSE 5: THE PARTIES’ REPRESENTATIVES 17
 CLAUSE 9: KEY PERSONNEL..... 19
 CLAUSE 10: SUBCONTRACTS 19
 CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI) 19
 CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY 19
 CLAUSE 13: CHANGES..... 19
 CLAUSE 15: HANDLING, PACKING AND TRANSPORT, TRANSFER OF
 OWNERSHIP AND RISK..... 19
 CLAUSE 17: PENALTIES/INCENTIVES..... 19
 CLAUSE 27: PRICING..... 20
 CLAUSE 34: APPLICABLE LAW 20
 CLAUSE 35: DISPUTE RESOLUTION 20
 CLAUSE 36: GENERAL 21
 CLAUSE 37: INFORMATION TO BE PROVIDED..... 21
 CLAUSE 38: DISCLOSURE..... 22
 CLAUSE 41: USE OF INTELLECTUAL PROPERTY RIGHTS 22
 CLAUSE 42: SOFTWARE 23
 CLAUSE 43: BACKGROUND INTELLECTUAL PROPERTY RIGHTS..... 23
 CLAUSE 49: TRANSFER OUTSIDE THE MEMBER STATES 24

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

APPENDIX 2: STATEMENT OF WORK..... 1

**APPENDIX 3: STANDARD REQUIREMENTS FOR MANAGEMENT,
 REPORTING, MEETINGS AND DELIVERABLES 1**

APPENDIX 4: CONTRACT CHANGE NOTICE..... 1



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APPENDIX 5: STANDARD COVER PAGE FOR ESA STUDY CONTRACT REPORTS..... 1

*PLEASE ALSO REFER TO THE "SPECIFICATION FOR THE PRODUCTION OF 1
ESA STUDY CONTRACT REPORTS » WHICH SHALL APPLY, AND CAN BE FOUND
AT: 1*



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

The Contractor undertakes to carry out the detailed modelling and simulation of Silicon Pore Optics in the frame of the ATHENA mission; to deliver the hardware, software and documentation as described herein and to make an oral presentation of the results.

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

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

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

- 1.1.3 The Contractor shall start the following Phase upon receipt of written notification from the Agency’s representatives nominated in Article 5, Clause 5, Sub-Clause 5.1, of the relevant authorisation to proceed with the following Phase. Such notification shall be given within 4 weeks of the completion of the current ongoing Phase.

1.2. Applicable Documents

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

- a) The specific Articles of this Contract and its Appendix 1 (Payment Plan and Advance Payment(s) and other Financial Conditions);
- b) The General Clauses and Conditions for ESA Contracts (herein referred to as GCC), ref. ESA/REG/002, rev. 1, not attached hereto but known to both parties and available on <http://emits.esa.int> – “reference documentation” – “administrative documents”, as amended by this Contract;
- c) Appendix 2 hereto: The Statement of Work, reference SRE-FI/2014.053, issue 1, revision 0, dated 04/09/2014, its Annexes and its applicable documents;
- d) Appendix 3 hereto: The Standard Requirements for Management, Reporting, Meetings and Deliverables and its Annex A: Layout for Contract Closure Documentation;



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- e) Appendix 4 hereto: Contract Change Notice;
- f) Appendix 5 hereto: Standard Cover Page for ESA Study Contract Reports.



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ARTICLE 2 - DELIVERY

2.1. Place and Dates of Delivery

2.1.1 Documents

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

PHASE 1

2.1.1.1 The draft Phase 1 Report, shall be submitted for approval, in electronic format (pdf to be unlocked and searchable), to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than **30 May 2016**.

The final version of the Phase 1 Report shall be issued in two (2) paper copies, and an electronic file, not later than four (4) weeks after the Agency's approval of the draft version.

PHASE 2

2.1.1.2 The draft Phase 2 Report, shall be submitted for approval, in electronic format (pdf to be unlocked and searchable), to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than **29 May 2017**.

The final version of the Phase 2 Report shall be issued in two (2) paper copies, and an electronic file, not later than four (4) weeks after the Agency's approval of the draft version.

PHASE 3

2.1.1.3 The draft versions of the Final Report and Executive Summary Report as defined in Appendix 2 shall be submitted for approval, in electronic format (pdf to be unlocked and searchable), to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than **29 May 2018**.

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

- in two (2) paper bound copies and in two (2) copies on CD-ROM, and an HTML format copy of the Executive Summary Report, suitable for publication on the Agency's webpage, to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract; and



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- one (1) paper copy and one (1) copy on CD-ROM shall be sent to the ESA Information and Documentation Centre – ESTEC library, Postbus 299, 2200 AG, Noordwijk, The Netherlands.

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

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

2.1.2 Software

The Source and Object Code relevant to any software, mathematical models, data files, design files and computer programmes produced under this Contract shall be delivered to the Agency's Technical Officer specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract, not later than:

- the time of delivery of the draft Phase 1 Report stated in paragraph 2.1.1.1 here above for items produced under Phase 1,
- the time of delivery of the draft Phase 2 Report stated in paragraph 2.1.1.2 here above for items produced under Phase 2,
- the time of delivery of the draft Final Report stated in paragraph 2.1.1.3 here above for items produced under Phase 3.

All software packages shall be delivered including permanent licenses and sub-licenses. Any and all updated versions of the software shall be delivered in Object and Source Code including permanent licenses and sub-licenses.

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

2.1.3 Hardware

N.A.



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2.1.4 Contract Closure documentation

The Contract Closure form (Appendix 3, Annex A) shall be delivered in one (1) set of documentation each, to the Agency's authorised representatives not later than the time of submitting the invoice(s) for the Final Settlement (see also Article 3.2.3).



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ARTICLE 3 - PRICE & PAYMENT**3.1. Price**

The price of this Contract amounts to:

EUR 499 930
(four hundred ninety-nine thousand and nine hundred thirty Euros),

broken down per Phase, and per Contractor and Subcontractor(s) as follows (all amounts in Euro):

Company Name	Vendor Code	Type P/Prime; SD/Subc o Direct; SI/Subco Indirect	Co unt ry (IS O Co de)	Phase 1	Phase 2	Phase 3	Total Amount
Istituto Nazionale di Astrofisica (INAF)- Osservatorio Astronomico di Brera (OAB)	1000003700	P	IT	105 754	105 503	104 331	315 587
DTU	100000428	SI	DK	60 880	61 142	62 320	184 343
TOTAL				166634	166645	166651	499930

- 3.1.1 The type of price is Firm Fixed Price as defined in Section 2.1 of Annex II to the GCC for Phases 1, 2 and 3.
- 3.1.2 The above amounts do not include any taxes or duties in the Member States of the Agency.
- 3.1.3 The price is deemed to include all applicable fees for licences to be purchased and delivered in the frame of the Contract, indicating the Agency as the end user. The price is further deemed to include any and all licence fees payable according to Clauses 43.4, 43.6 and 43.7 of the GCC.
- 3.1.4 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS 2010, to the addressee(s) specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract. Reference to INCOTERMS in this provision is exclusively for the purpose of price definition.



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3.2. Payment

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

Payments shall be made according to the provisions hereunder.

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

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

Payments shall be made within thirty (30) calendar days of receipt at ESA-ESTEC Finance, Central Invoice Registration Office of the documents listed and fulfilment of the requirements as specified in Articles 3.2.1 to 3.2.4¹ below. Only upon fulfilment of the latter requirements shall the invoice be regarded as due by the Agency.

3.2.1 Advance Payment (not applicable):

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

3.2.2 Progress Payment(s)²:

- Milestone Achievement Confirmation (MAC) (hereinafter referred to as “Confirmation”) with supporting documentation attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Appendix 1 hereto.
- Invoice(s);

3.2.3 Final Settlement:

- Confirmation, with supporting documentation attached in esa-p. The supporting documentation shall justify the actual achievement of the milestones as defined on the Payment Plan Specified in Appendix 1 hereto;
- Invoice(s);

¹ This is reflected in esa-p as “30 days upon receipt by ESA, in esa-p, of both the confirmation and the invoice”

² Job Aid: How to submit a MAC or Invoice in 6 steps found in the Industry Portal at http://www.esa.int/about_Us/Industry/esa-p_for_suppliers



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- Receipt and/or acceptance, by the Agency, of all deliverable items, of the services to be rendered and other obligations to be fulfilled, in accordance with the terms of this Contract;
 - The Contract Closure Documentation using the template provided in Appendix 3, Annex A;
 - In case of non-authorisation by ESA at the end of a Phase, of the subsequent Phase, the last payment milestone of the last authorised Phase shall be deemed to constitute the Final Settlement of the Contract and all conditions associated to the Final Settlement shall be fulfilled for payment of such milestone.
- 3.2.4 The Contractor, furthermore, undertakes to provide further supporting documentation if required by the Contract (e.g. Summary Cost Reports for cost reimbursement type contracts), with the electronic invoices and Confirmations in support of the claims.
- 3.2.5 The Agency shall credit the account of the Contractor to the benefit of both the Contractor and his Sub-Contractor(s). The Contractor shall be responsible for paying the accounts of its Sub-Contractor(s), for this Contract, within ten (10) working days of approval of the relevant invoice. The Contractor shall indemnify the Agency against any claims arising from such Sub-Contractor(s), caused by the Contractor's failure to pay the Sub-Contractor(s). The Contractor shall supply to the Agency, upon 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) premises and ascertain the progress of the work being performed under the Contract, prior to making the progress payment concerned.
- The Contractor shall approve the Sub-Contractor(s) invoices within ten (10) calendar days from their submission and achievement of the relevant milestone - whichever the latter.
- The Contractor shall, upon request at any time by the Agency, submit the payment conditions / provisions of individual subcontracts to the Agency for approval (if requested before the subcontract is placed) or verification.
- 3.2.6 If applicable, invoices shall separately show all due taxes or duties.
- 3.2.7 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.



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- 3.2.8 a) The Contractor shall ensure that all invoices and Confirmations, including those of its Sub-Contractors if applicable, are submitted for payment exclusively through the Agency's esa-p system, **and that all supporting documentation demonstrating Milestone achievement etc. is attached in esa-p.** If the Contractor has no access to the Agency's esa-p system at the time of signature of the present Contract, an immediate request for an esa-p user account shall be made by the Contractor to the ESA Helpdesk (email 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, the Contractor may submit invoices in paper format in five (5) copies to the ESA-ESTEC Finance, Central Invoice Registration Office, together with justifying documentation as required by the Contract.
- (ii) In cases where the Agency's esa-p system is inoperative at the moment of submission of the Confirmations, the Contractor may submit the Confirmations in paper format in three (3) copies to the Agency's Technical Officer mentioned in Article 5, Clause 5, Sub-Clause 5.1 a) of the Contract. A template Confirmation/MAC form can be obtained upon request to idhelp@esa.int by email.
- c) The Contractor undertakes to submit as well as require its Sub-Contractor(s) – in case of direct payments by ESA – to submit, complete invoices and confirmations, and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in esa-p.

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.

- 3.2.9 Payments shall be made by the Agency in EURO to the account specified by the Contractor. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). The parties agree that payments shall be considered as effected by the Agency on time if the Agency's orders of payment reach the Agency's bank within the payment period stipulated in Article 3.2 here above.
- 3.2.10 Any special charges related to the execution of payments shall be borne by the Contractor.



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

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



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ARTICLE 4 - ITEMS PRODUCED OR PURCHASED UNDER THE CONTRACT

- 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 EUR 5,000, 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 3 Annex A Table 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 ownership of without delay, with loan conditions making the Contractor responsible for the custody, the delayed delivery and the risks involved (at the Contractor's expenses),



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- 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.



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ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC

The General Clauses and Conditions for ESA contracts, ref. ESA/REG/002, rev. 1 (GCC) apply to this Contract with the following complements and amendments.

PART I: CONDITIONS APPLICABLE TO ESA CONTRACTS**CLAUSE 2: APPROVAL AND ENTRY INTO FORCE**

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

Mr. Frédéric Safa
Head of the Future Missions Preparation Office
Directorate of Science and Robotic Exploration

CLAUSE 5: THE PARTIES' REPRESENTATIVESSub-clause 5.1 The Agency's representatives

The Agency's representatives are:

- a) Mr Brian Shortt for technical matters or a person duly authorised by him. ("Technical Officer").

All correspondence for technical matters shall be addressed to:

	To:	With copy to:
Name	Brian Shortt	Peeter Wilkinson
Phone	+ 31 71 565 6779	+ 31 71 565 6528
Fax	+ 31 71 565 5985	+ 31 71 565 5985
e-mail	Brian.Shortt@esa.int	Peeter.Wilkinson@esa.int
Mail Address	ESA/ESTEC Keplerlaan 1, 2201 AZ Noordwijk ZH, The Netherlands	ESA/ESTEC Keplerlaan 1, 2201 AZ Noordwijk ZH, The Netherlands

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

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



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	To:	With copy to:	
Name	Ms. Beatrice Weihert	Brian Shortt	Peeter Wilkinson
Phone	+31-71-565 3455	+ 31 71 565 6779	+ 31 71 565 6528
Fax	+31-71-565 5662	+ 31 71 565 5985	+ 31 71 565 5985
e-mail	Beatrice.Weihert@esa.int	Brian.Shortt@esa.int	Peeter.Wilkinson@esa.int
Mail Address	ESA/ESTEC Keplerlaan 1 2201 AZ Noordwijk ZH The Netherlands	ESA/ESTEC Keplerlaan 1, 2201 AZ Noordwijk ZH, The Netherlands	ESA/ESTEC Keplerlaan 1, 2201 AZ Noordwijk ZH, The Netherlands

Sub-clause 5.2 The Contractor's representatives

The Contractor's representatives are:

- a) Mr Daniele Spiga for technical matters or a person duly authorised by him. ("Technical Officer").

All correspondence for technical matters will be addressed to:

	To:	With copy to:
Name	Daniele Spiga	Roberto Moncalvi
Phone	+39 02 72320427	+39 02 72320334
Fax	+39 02 72320601	+39 02 72001600
e-mail	Daniele.spiga@brera.inaf.it	Roberto.moncalvi@brera.inaf.it
Mail Address	INAF/ Osservatorio Astronomico di Brera via E. Bianchi 46 23807 MERATE (LC) Italy	INAF/ Osservatorio Astronomico di Brera via Brera 28 20121 Milano (MI) Italy

- b) Mr Roberto Moncalvi for contractual and administrative matters or a person duly authorised by him. ("Contract Officer").

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

	To:	With copy to:
Name	Roberto Moncalvi	Daniele Spiga
Phone	+39 02 72320334	+39 02 72320427
Fax	+39 02 72001600	+39 02 72320601
e-mail	Roberto.moncalvi@brera.inaf.it	Daniele.spiga@brera.inaf.it
Mail Address	INAF/ Osservatorio Astronomico di Brera via Brera 28 20121 Milano (MI) Italy	INAF/ Osservatorio Astronomico di Brera via E. Bianchi 46 23807 MERATE (LC) Italy



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CLAUSE 9: KEY PERSONNEL

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

CLAUSE 10: SUBCONTRACTS

Part of the work is to be sub-contracted to the Sub-Contractors listed in Article 3.1 above.

CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)

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

CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY

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

CLAUSE 13: CHANGES

The template of a Contract Change Notice (CCN) is attached hereto as Appendix 4.

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

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

Sub-Clause 15.3.6:

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

CLAUSE 17: PENALTIES/INCENTIVES

Clause 17 shall not apply.



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CLAUSE 27: PRICING

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

CLAUSE 34: APPLICABLE LAW

The substantive law referred to in Clause 34 of the GCC is the law of the Italian Republic.

CLAUSE 35: DISPUTE RESOLUTION

The arbitration proceedings referred to in Clause 35 of the GCC shall take place in Rome, Italy.



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

For the purpose of this Contract:

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

The following provisions are added:

CLAUSE 36: GENERAL

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

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

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

The definition of “Gross Negligence” is added to Annex IV to the GCC as follows: **“Gross Negligence”** means 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.

CLAUSE 37: INFORMATION TO BE PROVIDED

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

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

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

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



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Exceptions from this are *as detailed in Clause 43 paragraph c) here below*. Such documents which are not subject to the Agency's disclosure rights, will be marked "Proprietary Information" by the Contractor and will not be disseminated outside of the Agency without the Contractor's prior written consent.

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

CLAUSE 38: DISCLOSURE

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

Sub-Clause 38.1

The provisions of Sub-Clause 38.1 shall apply to all documents, data and information supplied by the Agency to the Contractor in the frame of the Contract - whether marked "Proprietary Information" or "restricted use" – or not, including all documents, data and information originating from parallel activities, which might be supplied through the Agency.

Sub-Clause 38.2:

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

CLAUSE 41: USE OF INTELLECTUAL PROPERTY RIGHTS

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

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



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CLAUSE 42: SOFTWARE

The following provisions are added to Clause 42.1:

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

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

CLAUSE 43: BACKGROUND INTELLECTUAL PROPERTY RIGHTS

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

- a) It is recognized by the Parties that the Contractor does not foresee to make use of any Background Intellectual Property for the work under this Contract. If the Contractor has not identified Background Intellectual Property Rights by the end of the Contract, all Intellectual property Rights used during the execution of the Contract are treated as arising from work performed under the Contract, unless and until the Contractor provides the Agency with evidence of the relevant Background Intellectual Property Rights.
- b) In the event that the Contractor, after the signature of the Contract, invokes the existence of any *additional* Background Intellectual Property to be used for the purposes of the present Contract, the Contractor shall provide conclusive evidence to the Agency of the existence of this Background Intellectual Property and shall justify the reasons for which the existence of this Background Intellectual Property was not invoked before the Contract signature.



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

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

- c) For the purpose of Clauses 43.4 and 43.7, the term “Agency Project” shall refer to the Agency’s Science and Robotic Exploration Programmes.

CLAUSE 44: EXPLOITATION

The following is added to Clause 44:

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

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 5, Clause 5, Sub-Clause 5.1.



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

In: ROME - ITALY

In Noordwijk, The Netherlands

On: 09-JULY-2015

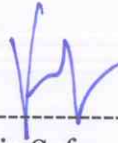
On: 26-JUNE-2015

For the Contractor

For the European Space Agency (ESA)



Dr. Umberto Sacerdote
INAF Director General



Mr. Frédéric Safa
Head of the Future Missions ~~Preparation~~
Office
Directorate of Science and Robotic
Exploration



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SPECIFIC APPROVAL (FOR CONTRACTS PLACED UNDER ITALIAN LAW ONLY)

The Contractor certifies that he specifically approves the following Clauses of the General Conditions, ESA/REG/002:

- Clause 7: Transfer of the Contract
- Clause 10: Sub-Contracts
- Clause 18: Damage to Staff and Goods
- Clause 19: Liability for consequential Damages during the Execution of the Contract
- Clause 20: Liability after Acceptance
- Clause 24: Disclosure and Use of Classified Information by the Contractor
- Clause 25: Infringements of the Law
- Clause 26: Infringements of Third Party Rights
- Clause 30: Termination - General Rule
- Clause 32: Termination with Fault of the Contractor
- Clause 33: Termination in Special Cases

On behalf of the Contractor,

in ROME - ITALY

on this day 09-07-2015



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