



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

with

[Partner]

[Title of Cooperative Agreement]



1. The Parties:

The EUROPEAN SPACE AGENCY , having its seat at: 8-10 rue Mario Nikis, CS 45741, 75738 Paris CEDEX 15, France, represented by its Director General, Mr Josef Aschbacher, (hereinafter called the “Agency” or “ESA”), acting through its establishment:	
The European Space Research and Technology Centre (ESTEC), located at: Keplerlaan 1, 2201 AZ Noordwijk, The Netherlands	
Represented by:	Mr Leopold Summerer, Head of Technology Department (H/TEC-R)

and

XXX (hereinafter called the “Partner”),	
Whose registered office is at:	XXX
	XXX
	XXX
Represented by:	its, Ms/Mr

2. Objective:

The Parties will jointly pursue the following objective of the activity as described in the Activity Description and the accepted Idea available on OSIP, reference [Idea ID] (see Annex I) (all hereafter referred to as the “Work”).

3. Applicable Documents:

The Work shall be performed in accordance with the provisions stated in the following documents, listed in order of precedence in case of conflict:	
a)	The Cooperative Agreement, including its General Terms and Conditions, attached hereto;
b)	The Partner’s Outline Proposal (Idea) available on OSIP, reference [Idea ID], not attached hereto but known to both Parties.
c)	The Activity Description



4. Funding:

The total agreed cost presented by the Partner for this Cooperative Agreement amounts to:
 ... EUR
 (... Euro).

The Agency’s funding of this activity (the “Agency funding”), amounts to:
 ... EUR
 (... Euro).

4.1. Broken down per Partner and Subcontractors as follows:

Company Name	ESA Entity Code	Type P/Partner Subco Indirect	Country (ISO Code)	Total Amount co-funding	Total Amount in Euro
XXX	XXX	XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX	XXX	XXX

Any amount stated above does not include any value added taxes (“VAT”) or import duties in the Member States of the Agency.

5. Payment Plan:

Milestone (MS) Description	Schedule Date	Payments from ESA to Partner (in Euro)	Country (ISO code)
<u>[Option if activity longer than 12 months] Progress (MS 1):</u> Upon successful delivery of the midterm report <u>[end Option]</u>	To + ... half activity duration	XXX	XXX
<u>Final Settlement (MS 2):</u> Upon the Agency’s acceptance of the final deliverables (Final Report, Executive Summary and Illustration), last progress report including the registration status of IPR due under the Cooperative Agreement, and the Partner’s fulfilment of all other contractual obligations including evidence of the implementation of the co-funded element by the Partner <i>and the Subcontractors</i> .	To + ... months	(not less than 10% of the total Cooperative Agreement price)	XXX
TOTAL		XXX	

5.1. Advance Payment(s)¹ and other Financial Conditions:

Partner (P)	Company Name	ESA Entity Code	Country (ISO code)	Advance Payment (in Euro)	Offset against ²	Offset by Euro	Condition for release of the Advance Payment
P				Amount	MS 1	Amount	Upon signature of the Cooperative Agreement by both Parties

6. Parties Representatives during the Cooperative Agreement Execution:

6.1. Agency Representatives:

Technical Officer		To:	With copy to:	
	Name:	Ms/Mr	Mr Leopold Summerer	Mr Moritz Fontaine
	Telephone n°:	+xx xx xxx xxxx	+31 71 565 6227	+33 15 369 7506
	Email Address:	@esa.int	Leopold.Summerer@esa.int	Moritz.Fontaine@esa.int

Contracts Officer		To:	With copy to:	
	Name:	Mr Gian Lorenzo Casini	Ms/Mr	Mr Leopold Summerer
	Telephone n°:	+31 71 565 3866	+xx xx xxx xxxx	+31 71 565 6227
	Email Address:	Gian.lorenzo.casini@esa.int	@esa.int	Leopold.Summerer@esa.int

Data Protection Officer	Email Address:	
	dpo@esa.int	

6.2. Partner's Representatives:

Technical Officer		To:	With copy to:

¹ Whenever an SME (as per definition in <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>) is involved as Partner or Subcontractor, it shall be entitled to a 35% Advance Payment of its part of the Agency funding irrespective of any cash disbursement needs.

² An SME has the right to request offset of the 35% advance at the end of the Cooperative Agreement, i.e. the last two milestones (ideally 25% at the last milestone and 10% at the preceding milestone), if this can be justified in view of the economic progress in the Cooperative Agreement.



	Name:	Ms/Mr	Ms/Mr
	Telephone n°:	+xx xx xxx xxxx	+xx xx xxx xxxx
	Email Address:	xxx	xxx

Contracts Officer		To:	With copy to:
	Name:	Ms/Mr	Ms/Mr
	Telephone n°:	+xx xx xxx xxxx	+xx xx xxx xxxx
	Email Address:	xxx	xxx

Data Protection Contact Point		To:
	Name:	Ms/Mr
	Telephone n°:	+xx xx xxx xxxx
	Email Address:	xxx

7. The substantive law according to which this Cooperative Agreement shall be construed is the law of [Country].

8. The Arbitration Tribunal shall sit in [City, Country].

9. **Special Terms and Conditions:**

The Partner shall identify the person responsible for the implementation of the Work. The Work shall be executed by the Researcher, an employee of the Partner, and nominated by the Partner, namely

[insert full name of Partner’s Employee]

The Partner shall provide the Agency with the following deliverables:

- a. a midterm report at the latest on **To + half activity duration**
- b. a final report, executive summary, illustration and progress report including the registration status of IPR due under the Cooperative Agreement and cost certification at **To + activity duration**
- c. any additional report/documentation identified in the Work.



Digitally signed by the Parties to this Cooperative Agreement,

For the Partner

For the European Space Agency (ESA)

Authorised Partner
Representative

Leopold Summerer, H/TEC-R

Appendix I – Cooperative Agreement proposal (export from OSIP)

Title:

Proposal ID (on OSIP):

Abstract:

Appendix II: General Terms and Conditions

1. GENERAL TERMS OF EXECUTION

- 1.1. The Partner shall be fully responsible towards the Agency for the proper execution of the Work, including any subcontract agreed hereunder. Subcontracts other than those specified in Section 4.1 in the Front Pages, are expressly excluded.

The conditions of the subcontracts, if any, shall secure for the Agency any rights granted to it under the terms of this Cooperative Agreement. The Partner shall ensure proper and timely placing of subcontracts and processing of payments throughout the consortium.

In case any Subcontractor has SME status, as per the definition of SMEs given by the European Commission (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>), the Partner shall ensure that the relevant subcontract foresees an automatic grant of a 35% Advance Payment of its part of the Agency funding irrespective of any cash disbursement needs.

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

- 1.2. All notices under this Agreement shall be in writing and shall be sent via electronic, express and/or certified mail to the contact persons identified in Section 6 in the Front Pages. The language of this Cooperative Agreement and of all communications hereunder shall be English. Any change to this Agreement will be in writing after agreement by the Parties.
- 1.3. The Parties shall use their best endeavours to amicably settle any dispute arising out of the Cooperative Agreement. Failing an attempt towards an amicable settlement, all disputes shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one (1) or three (3) arbitrators designated in conformity with such Rules. The Tribunal's award shall be final, binding on the Parties and no appeal shall lie against it. The enforcement of the award shall be governed by the rules of procedure in force in the state/country in which the award is to be executed.
- 1.4. The Partner shall, at all times, comply with the nationality requirements stated in the Call for Proposal.
- 1.5. The Partner shall, in accordance with the Agency's Policy on the Prevention, Detection and Investigation of Fraud, to the extent allowed by applicable national law,

cooperate with the Agency's investigation team in any investigation of fraud initiated by the Agency and inform its personnel of their obligation to cooperate accordingly. The Partner shall ensure that this provision is duly reflected in all subcontracts entered into for the purpose of this Cooperative Agreement.

- 1.6. Any publicity material prepared by the Partner related to an activity performed by the Partner in the context of this Cooperative Agreement shall acknowledge that the activity is/was carried out "under a programme of, and (co) funded by, the European Space Agency". It shall display the ESA logo if the Agency so requires. It shall also carry a disclaimer stating that the view expressed in such publications can in no way be taken to reflect the official opinion of the European Space Agency.
- 1.7. Any transfer of Intellectual Property Rights or any product, process, application or result arising from Work performed under the Cooperative Agreement by the Partner to any entity in a non-Member State or any international organisation shall comply with all applicable laws including all export control laws, regulations, rules and procedures and any relevant international agreements relating to the export of goods and services.
- 1.8. This Agreement creates no joint venture, partnership or agency between the parties and may not be assigned except to the successor in a sale, merger or acquisition of the assignor. This Agreement is created solely for the benefit of the Agency and the Partner, and confers no rights or remedies on any Third Parties.
- 1.9. If any portion of this Agreement is held invalid, it shall not affect the validity of the remaining Agreement, unless applying such remaining portions would frustrate the purpose of this Agreement. The clauses related to Audits, Intellectual Property rights and licenses shall survive this Agreement.
- 1.10. The Parties agree that digital signature of this Cooperative Agreement shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Cooperative Agreement.

2. DELIVERY OF REPORTS, VALIDATION OF RESULTS AND MANAGEMENT REQUIREMENTS

2.1. General

- 2.1.1. Payment milestones shall be considered as achieved only when the relevant reports are delivered, and results of the Work are validated by the Agency.
- 2.1.2. Should it seem likely that the originally specified payment milestone achievement date(s) may be exceeded, the Partner shall immediately notify the Agency in writing and provide a detailed justification for the delay.
- 2.1.3. No price adjustment in favour of the Partner will be applicable for the period of delay in payment milestone achievement.
- 2.1.4. Should in the execution of this Cooperative Agreement a need arise to provide the Agency with information, which is subject to export control laws and regulations, the Partner shall be responsible to ensure in all cases that such information is passed on to the Agency in strict compliance with the provisions of such export control laws and regulations.
- 2.1.5. In the event of an alleged delay in payment milestone achievement due to Force Majeure, the Partner shall report to the Agency the Force Majeure event and its immediate consequences within one (1) week after its occurrence. The Partner shall bear the burden of proof for the existence, duration and consequences of Force Majeure, such proof to be provided within one (1) month from the occurrence of the Force Majeure event.

2.2. Management Requirements

The Partner shall provide a progress report to the Agency's representatives, at Partner and subcontractor level for each payment milestone addressing project progress, outcomes, expenditures, adherence to the finance and audit requirements and registration status of Intellectual Property arising from Work performed under the Cooperative Agreement, with respect to the activities shown on the latest agreed bar-chart. If no updated bar-chart was agreed, the bar-chart included in the Partner's proposal will be applicable.

2.3. Validation of Results

The validation of the results of the Work shall be declared upon verification, by the Agency, that the Work has been performed in compliance with the agreed requirements and that the agreed results have been achieved. The said results shall be considered as validated in the absence of an explicit reaction by the Agency within one (1) calendar month from the time of submission for validation. The provisions of Article 4.5.1 below shall apply in this respect.

2.4. Deliverable Documents

The Partner shall, during the performance of this Cooperative Agreement, deliver all documentation and reports specified in the Partner's Proposal, as modified in the signed Minutes of Clarification Meeting in the format and quantities specified therein.

These shall be sent to the Agency's Technical Officer mentioned in Section 6.1 in the Front Pages, unless otherwise specified, in accordance with the following specific provisions:

- 2.4.1. The draft versions of the final documents as defined in the Partner's Proposal, as modified in the signed Minutes of Clarification Meeting shall be submitted for approval, in electronic format, to the Agency's Technical Officer specified herein, not later than the date specified in the Minutes of Clarification Meeting.
- 2.4.2. The finalised versions thereof shall be issued not later than four (4) weeks after the approval of the draft versions.
- 2.4.3. The Final Report shall be suitable for publication in a scientific or technical journal. Commercially sensitive information shall not be part of the Final Report itself but shall be presented as a separate document marked "Proprietary Sensitive Information" in accordance with the provisions in Article 5.1. The Agency shall have wide distribution rights of the Final Report, except for the separate document marked and containing "Proprietary Sensitive Information".

3. COST AND FUNDING

- 3.1. The Agency funding is hereby defined as a Firm Fixed amount and, as such, the agreed Firm Fixed funding by the Agency shall not be subject to any adjustment or revision by reason of the increase of the actual costs incurred by the Partner in the performance of this Cooperative Agreement.

4. PAYMENTS AND INVOICING

4.1. Payments

Payments shall be made within thirty (30) days of submission via esa-p to ESA of the required documents and fulfilment of the requirements specified in Articles 4.1.1 – 4.1.3 below³. Only upon fulfilment of these requirements shall the Agency regard the invoice as due.

Requirements to be fulfilled:

- 4.1.1. Advance Payment:
- Advance Payment Request ("APR") (if any): to be submitted after signature of this Cooperative Agreement by both Parties. The Advance Payment

³ This is reflected in esa-p as "30 days upon receipt by ESA, in esa-p, of both the confirmation and the invoice", see in esa-p GUIDE Frequently Page 9/16

constitutes a debt of the Partner to the Agency until it has been set-off against subsequent milestone(s) as shown in Section 4 in the Front Pages.

4.1.2. Progress Payment(s)⁴:

- Milestone Achievement Confirmation (“MAC”) (hereinafter referred to as “confirmation”) with supporting documentation, as necessary, submitted by the Partner and attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Section 4 in the Front Pages; and
- Invoice.

4.1.3. Final Settlement:

- Confirmation submitted by the Partner with supporting documentation as necessary attached in esa-p. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Section 4 in the Front Pages; and
- Invoice; and
- Payment milestone achievement, and validation by the Agency, of all due items and fulfilment of all other obligations in accordance with the terms of this Cooperative Agreement; and
- The signed certification of the Partner’s Senior accountant or external accountant as per Article 3 above.

Payments shall be made according to the provisions hereunder:

The Agency shall credit the account of the Partner to the Partner’s benefit and to the benefit of the Partner’s Subcontractor(s), if any. The Partner shall be responsible for approving or rejecting, within ten (10) days of receipt, the relevant Subcontractor(s)’(s’) invoice(s) and related supporting documents (e.g. MACs, Cost Reports). The Partner shall also be responsible for paying the accounts of its Subcontractor(s), for this Cooperative Agreement, in accordance with the applicable law and normal commercial practice. The Partner shall indemnify the Agency against any claims arising from such Subcontractor(s), caused by the Partner’s failure to pay the Subcontractor(s). The Partner shall supply to the Agency, upon request, evidence of the payment(s) made to its Subcontractor(s).

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

- 4.1.4. 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.

When releasing the payment for a given milestone, if applicable, the Agency’s payment shall be made after due deduction of the corresponding offset of the Advance Payment(s) as per the conditions of Section 4 in the Front Pages.

In case of partial payment(s), the Agency shall deduct from the corresponding invoice(s) relative to the same milestone any outstanding amount of the Advance Payment(s) still to be offset.

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

a) The Partner shall ensure that the APR (if any), all confirmations and all invoices are submitted for payment exclusively through the Agency’s esa-p system. If the Partner has no access to the Agency’s esa-p system at the time of signature of this Cooperative Agreement, an immediate request for an esa-p user account shall be made by the Partner to the ESA Helpdesk (mail to: esait.Service.Desk@esa.int), specifying a contact name, the company name and the ESA Cooperative Agreement Number.

b) In cases where the Agency’s esa-p system is inoperative at the moment of submission of the confirmation, the Partner may submit the confirmation by email to the Agency’s Technical Officer mentioned in Section 5.1 in the Front Pages of this Cooperative Agreement. A template confirmation form can be obtained upon request to esait.Service.Desk@esa.int.

c) The Partner undertakes to complete confirmations and invoices, and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in esa-p.

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

- 4.1.6. Payments shall be made by the Agency in EURO to the account specified by the Partner. 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

⁴ For detailed information on how to submit and approve confirmations, invoices and APR in esa-p, you may consult the following two Quick Guides:
http://esa-p-help.sso.esa.int/Quick_Guide_How_to_approve_a_Confirmation_or_Invoice_or_APR.pdf

http://esa-p-help.sso.esa.int/Quick_Guide_How_to_approve_a_Confirmation_or_Invoice_or_APR.pdf

bank within the payment period stipulated in Article 4.1.1 – 4.1.3 above.

4.1.7. Any special charges related to the execution of payments shall be borne by the Partner.

4.1.8. Any questions concerning the operation of esa-p shall be addressed to the ESA Helpdesk (mail to: esait.Service.Desk@esa.int).

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

4.2. Personal Data Protection

4.2.1. The Agency shall be a separate Data Controller of the personal data of the Partner specified in Section 5.2 in the Front Pages, as well as in the Proposal.

4.2.2. The Agency processes Personal Data subject to the ESA PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available at http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations.

4.2.3. A Privacy Notice regarding the processing of the Personal Data by the Agency for this processing operation is available at <https://esastar-publication.sso.esa.int/supportingDocumentation/details/39>.

4.2.4. The Partner shall share the above-mentioned ESA Privacy Notice, with all Key Personnel whose Curricula Vitae were submitted to ESA.

4.2.5. The Partner shall be a separate Data Controller of the contact details of the Agency's Representatives as specified in Section 6.1 in the Front Pages.

4.2.6. The Partner shall process the above-mentioned contact details of the Agency's Representatives subject to the Personal Data protection laws and regulations applicable to the Partner (e.g. EU Regulations in the field of personal data protection, including but not limited to the General Data Protection Regulation (Regulation (EU) nr. 2016/679) (hereinafter "GDPR").

4.2.7. The Personal Data exchanged by the Parties in the frame of this Cooperative Agreement will only be processed for:

- a) the performance of the Cooperative Agreement, including implementation, management, monitoring, audits and the fulfilment of the obligations set out herein;
- b) the management of the relationship of the Parties in relation to the Cooperative Agreement, notably for administrative, financial, audit or for communication purposes;
- c) the compliance with any legal or regulatory obligation to which a Party is subject.

4.3. Infringement of the Law - Infringement of Third-Party Rights

4.3.1. The Agency shall not be responsible if the Partner infringes the laws or statutes of its country or of any other country whatsoever.

i. In the event of a reasonable suspicion of infringement of any patent rights and other Intellectual Property Rights of a Third Party, the Work being performed under this Cooperative Agreement shall be stopped immediately. Assessment of the suspicion shall be performed by the Partner and, if confirmed, both Parties shall agree on a new approach to achieve the objectives of this Cooperative Agreement, either by obtaining the applicable licence(s) from the Third Party by the Partner and/or by signing a Cooperative Agreement Change Notice (CCN) agreed upon between both Parties, in order to avoid the infringement. The purpose of the CCN shall be either to (i) restart the Work, if plausible, due under the changed circumstances; or (ii) terminate the Cooperative Agreement, in accordance with Article 4.5.1 hereunder, if the infringement cannot be avoided.

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

4.4. Liabilities

4.4.1. Claims between the Parties in respect of damages to staff and goods occurring during the execution of the Cooperative Agreement shall be settled in the following manner:

4.4.2. Claims for injuries, including death, sustained by the Parties' representatives or workforce by virtue of their involvement in the Cooperative Agreement shall be settled in accordance with the Law governing the Cooperative Agreement.

4.4.3. Claims for damage caused by one of the Parties to goods owned by the other Party shall be settled in accordance with the Law governing the Cooperative Agreement. Except in case of gross negligence or wilful misconduct, the total aggregate liability of either Party for damage to goods owned by the other Party shall not

exceed the amount which is quoted in the Cooperative Agreement as the total amount of the Agency's funding.

- 4.4.4. Except in case of gross negligence and wilful misconduct, the Parties shall not be liable towards each other for indirect or consequential damages sustained by the Parties, arising from and during the execution of the Cooperative Agreement. For the sake of clarity and as an example, indirect or consequential damages include, but are not limited to: loss of contract, income or revenue; loss of profit or interests; loss of financing; loss of customer; loss of availability and use of facilities; loss of availability and use of workforce productivity or loss of services of such persons; loss of opportunity; loss of rental expenses; financial impact on other connected activities of either party.
- 4.4.5. The Partner shall indemnify and hold the Agency harmless from all claims, damages, losses and expenses (including legal fees and expenses) raised by Third Parties against the Agency for damages sustained due to a defect in a product manufactured and/or produced as part of the Work under the Cooperative Agreement.

4.5. Termination

- 4.5.1. Should any of the results of the Work fail to meet any of the agreed requirements and/or specifications to such an extent as to seriously jeopardise the performance of this Cooperative Agreement and/or to defeat its objectives, the Agency reserves the right to terminate this Cooperative Agreement after considering the explanations provided by the Partner, following a formal written notification to the Partner to provide explanations within ten (10) working days.

Should the Partner fail to obtain an export authorisation from the competent national authority, the Agency shall have the right to terminate this Cooperative Agreement without further notice.

The Agency reserves the right, after full consideration of all relevant circumstances, including the observations of the Partner, and following a formal notification, to terminate a Cooperative Agreement in the event that the Partner finds itself in any of the exclusions to participate in an ESA Tender Action stipulated in Article 12 of the Contracting Regulations, in so far as permitted by the applicable law.

Termination of this Cooperative Agreement as specified above shall entail no compensation being due to the Partner other than the amounts corresponding to the milestone payments already made hereunder at the time of serving the termination notice. Any amounts corresponding to Advance Payments not entirely offset hereunder shall remain payable to the Agency.

- 4.5.2. Additionally, the Agency reserves the right not to proceed further with this Cooperative Agreement at the end of a technical phase/key performance gate as specified in the Minutes of the Clarification Meeting. The Agency shall exercise such right by serving a termination notice to the Partner within thirty (30) days counting from the completion of the preceding phase. In the event of termination and at the time of serving

the termination notice, the Partner shall keep the amounts already paid for achieved milestones.

- 4.5.3. The Agency may at any time terminate the Cooperative Agreement by giving written notice with immediate effect in case of fraudulent practices in connection with the Cooperative Agreement, especially by deceit concerning the nature, quality or quantity of the supplies, and the methods or processes of manufacture employed or by the giving or offering of gifts or remuneration for the purpose of bribery to any person in the employ of a Member State or of the Agency or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of the Partner or otherwise. The list of fraudulent practices is non-exhaustive. Therefore, the term includes a wide range of misconduct like theft, corruption, embezzlement, bribery, forgery, misrepresentation, collusion, money laundering and concealment of material facts that may affect, amongst other, the implementation of the co-funded element or the nationality accounted for by the Agency, as well as if the nationality conditions agreed for this Cooperative Agreement are not complied with. Upon suspicion of fraudulent practices in connection with the Cooperative Agreement, the Agency will conduct an investigation, which may involve external parties.

In case of termination due to fraudulent practices, the Agency shall always claim compensation for damages caused to the Agency by the Partner's failure to comply with the conditions of the Cooperative Agreement. The value of the compensation will be indicated in the special conditions of termination.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. Information, data, reports and results arising from Work performed under this Cooperative Agreement shall be delivered to the Agency for the sole purpose to assess the progress of the Work.

If the Work (including evidence/material for validation) are affected by Third Party rights or previously developed Rights, the Partner shall ensure that the Third-Party, or previously developed rights' licences comprise the Agency's right to access and validate the progress of Work.

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

Neither Party shall disclose any information, data, reports, results obtained from the other Party, and which both Parties recognise as being Proprietary Sensitive Information without the other Party's previous written authorisation. Without prejudice to the foregoing and limited to the purpose and scope of this Cooperative

Agreement, both Parties may circulate such documentation to their workforce or collaborators that require the said documentation for the sole purpose of complying with, or inspecting the progress of, this Cooperative Agreement.

5.2. The obligations provided in Articles 5.1 shall not apply to (electronic) documentation which:

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

5.3. Ownership and Use of Intellectual Property Rights

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

5.3.2. The Partner shall subsequently inform the Agency of any application to register such results arising from Work performed under this Cooperative Agreement and, within two (2) months of the date of filing, provide the Agency with all details on that application.

5.3.3. All Registered Intellectual Property Rights arising from Work performed under the Agreement and with an intended use for activities in the field of space research and technology and their space applications will be available to:

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

- ii) Participating States and Persons and Bodies to use on Favourable Conditions for the Participating State's Own Requirements.

- iii) Academic and research institutions within the Participating States to use on a free licence without the right to grant sub-licences, for their own scientific research purposes, excluding commercial purposes and providing the Partner agrees such use is not contrary to its Legitimate Commercial Interests.

5.4. The free licences provided for the benefit of ESA

The free licences provided on the Registered Intellectual Property arising from Work performed under this Cooperative Agreement indicated herein for the benefit of ESA shall be deemed granted through signature of the present Cooperative Agreement and without the need to implement a separate licence.

DEFINITIONS

“Advance Payment”	means a payment foreseen in the Cooperative Agreement intended to provide the Partner with liquidity to allow the initiation of the contractual works.
“Agency’s Own Requirements”	means the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1(a) and (b) of the European Space Agency Convention, which for the purpose of this agreement excludes, for the avoidance of doubt, activities and programmes in the field of non-space or downstream applications.
“Cooperative Agreement”	An agreement, including any amendment to such agreement, resulting from a Call for Proposals without Procurement, established in writing between the Agency and a Partner, whereby the Agency shall (co-)fund an activity to be carried out by the Partner, without the Procurement by the Agency of the resulting goods or services.
“Day”	means calendar day.
“Financial Conditions”	means the conditions a seller is willing to sell on and a purchaser willing to accept taking into account Market Conditions, but which compensate the parties who paid for development of the subject matter being sold (or licensed) according to the amount each party contributed for development.
“Favourable Conditions”	means conditions more favourable for the purchaser than Market Conditions but still allowing reasonable profit for the seller.
“Force Majeure”	means an event which is, unforeseeable, unavoidable and external at the time of Cooperative Agreement signature, occurs beyond the control of the affected Party and renders the performance of the Cooperative Agreement impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.
“Front Pages”	means the pages filled in with the specific details related to the Cooperative Agreement, signed by the Parties.
“Intellectual Property Rights”	shall include all rights relating to literary, artistic and scientific works, performances of performing artists, phonograms, and broadcasts, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks, and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
“Legitimate Commercial Interests”	means an interest the Partner can demonstrate which is essential to its ability to commercially exploit Intellectual Property Rights arising from work performed under the Cooperative Agreement for a defined period of time which includes but is not limited to an economic position vis-à-vis a competitor, loss of profits or survival of an undertaking.
“Market Conditions”	means conditions a seller is willing to sell on and a purchaser is willing to accept without restrictions or influence by the Agency.
“Member State”	means a State which is Party to the Convention of the European Space Agency in accordance with Articles XX and XXII of the said Convention.
“Participating States”	means a Member or non-Member State participating in a given Agency programme according to Article V.1 (a) and (b) of the European Space Agency Convention.

“Participating State’s Own Public Requirements”

means a public programme in the field of space research and technology and their space applications fully funded or funded to a substantial extent by the Participating State, which for the purpose of this agreement excludes, for the avoidance of doubt, activities and programmes in the field of non-space or downstream applications.

“Persons and Bodies”

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

“Progress Payment”

means a payment that is made against successful achievement, certified in writing by the Agency’s representatives, of a milestone defined in the milestone payment plan of a fixed price Cooperative Agreement.

“Proprietary Sensitive Information”

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

“Registered Intellectual Property Rights”

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

“Subcontractor”

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

“Third Party”

means a natural or legal person not having signed the Cooperative Agreement.