

CHALLENGES of EU INTERVENTION IN SPACE NEW TECHNOLOGIES, OLD LEGAL PROBLEMS

EUSPACE – UNIVERSITY OF GENOA LAW SCHOOL

Imperia, 3 – 7 July 2017

Francesco Amicucci, Thales Alenia Space

Contractual relationships among Space actors

FOREWORD

Space is a strategically important tool supporting a number of economic activities and policy areas and it is more than a technological issue. It always had and will continue to have a strong political dimension which is in the course of being developed properly at European level so far. The European Space Agency (ESA) has been conceived as an inter-governmental research and development agency allowing Europe to develop some unique scientific and technological capacities and placing it at face level with the leading space-faring nations in the world. But ESA is not a political actor but it has got all the necessary skills to play a major role in this environment. Over the past decades, the political dimension of space has been driven by national policies of those countries most active in space in Europe. However, with increasing competition from new emerging space-faring nations their individual political weights may no longer suffice to address the challenges ahead. An EU space policy could reinforce the European identity at international political level. At the same time, EU intervention could give space a stronger political impetus, for example by putting in place the right framework conditions to maintain and foster space activities in Europe and its industry's competitiveness at global level.

The Union only acquired a competence in the area of space policy with the Lisbon Treaty signed on December 13, 2007. In particular, Article 189 TFEU calls on the Union to draw up a European space policy in order to promote scientific and technical progress, industrial competitiveness and the implementation of its policies.

The space sector provides an important contribution to several priorities of the Commission including:

- *A deeper and fairer internal market with a strengthened industrial base*
- *Jobs, Growth and Investment (space and all industries building on satellite services);*
- *Energy Union (climate, transport, energy);*
- *The Digital Single Market (telecommunication, data economy);*
- *Migration, border control, global disaster and crisis management;*
- *The EU as a Stronger Global Actor.*

In December 2008, the European Council highlighted the potential of space to impact on innovation and economic recovery.

In May 2009, the 6th Space Council emphasized "the need to mobilise existing innovation support mechanisms at European, national and regional level, and consider new support instruments to ensure cross-fertilisation of knowledge, innovation and ideas between space and non-space sectors, and between space industry and leading research organisations and universities".

*Following the adoption of its Innovation Union flagship initiative, the Commission has put forward its proposal for the **Horizon 2020** programme under the next Multiannual Financial Framework which encompasses research and innovation. Out of the proposed **80 billion Euro, 1.7 billion Euro are to be invested in space research and innovation.***

Within this scenario, the purpose of my presentation, bearing in mind the title "Contractual relationships among Space actors", will be focused in analysing, as a case study, the most relevant contractual clauses a a so-called "Framework Agreement". Such Agreement, in December 2016, was entered into by and between ESA, in the name and on behalf of the EUROPEAN UNION represented by the European Commission, and my "employer" Thales Alenia Space Italia S.p.a., a wholly owned subsidiary of Thales Alenia Space a joint venture company established in 2004 by Thales S.A. and Leonardo Società per azioni, for the Galileo System and Service Support for Exploitation Phase.

FRAMEWORK CONTRACT

Between

The EUROPEAN SPACE AGENCY,
(hereinafter called “ESA”),
represented by

through its establishment

The European Space Research and Technology Centre
(ESTEC),

In the name and on behalf of the EUROPEAN UNION
represented by :

The European Commission [hereinafter referred to as “the
EC”],

on the one part,

and

THALES ALENIA SPACE – ITALIA S.p.A.

a company with sole shareholder, jointly managed and co-
ordinated by Thales S.A. and Leonardo Società per azioni,
(hereinafter called “TASI” or “the Contractor”),

represented by,

on the other part,

Singularly referred to as “the Party” and together also
referred to as “the Parties”

First question: What is a Framework Agreement ???

*In the context of business negotiations, a **framework agreement** is an agreement between two parties that recognizes that same parties have not come to a final agreement on all matters relevant to the relationship between them, but*

have come to agreement on a number of matters to move forward with the business relationship, with further details to be agreed to in the future, mainly regarding the quantity of the goods to be supplied or services to be rendered.

Such additional matters are usually entered into by the parties along the duration of the Framework Agreement by specific Work Orders.

Table of Contents

We'll not examine all clauses of the subject agreement but it is worth showing the entire Table of Contents to mean the complexity of the text.

|

Whereas	5
List of Acronyms	9
Article 1 Scope of the Contract.....	10
Article 2 System and Service Baseline Support Activities.....	10
2.1 Contractual Baseline	10
Article 3 Implementation of System and Service Baseline Support Activities	11
Article 4 Price.....	11
Article 5 Price for System and Service Baseline Support Activities.....	11
Article 6 Work Orders for System and Service Additional Activities.....	12
Article 7 Price for System and Service Additional Activities	13
Article 8 Changes to the Contractual Baseline	13
8.1 Work Order Amendments	13
8.2 Changes to the Contractual Baseline	14
8.2.1 Changes introduced by the Agency	14
8.2.2 Changes introduced by the Contractor.....	15
8.3 Financial consequences of changes to the Contractual Baseline	15
9 General Conditions for System and Service Baseline Support Activities.....	16
9.1 Professional duties.....	16
9.2 Staff	16
9.3 Customer Undertakings for System and Service Baseline Support Activities.....	18
9.4 Items Made Available By The Agency To The Contractor	20
9.4.1 Supply of items and Duty of Care	20
9.4.2 Transfer of risk.....	20
9.4.3 Liability for Damage	20
9.4.4 Ownership and Return obligations	20
9.4.5 Inventory	20
9.4.6 Specific Conditions	21
9.5 Conditions of supply of the Deliverable Items.....	21
9.5.1 Time, place and quantity.....	21
9.5.2 Shipping Instructions, Handling and Storage	21
9.5.3 Export/Import Licenses/Permits	22
9.5.4 Transfer of ownership and risk	23
9.5.5 Acceptance and rejection	24
9.5.6 Warranty.....	25
Article 10 Prefinancing, Payments, and Payment Suspension	27
10.1 Pre-financing.....	27
10.2 General Payments Provision.....	27
10.3 Payment for the last payment milestone.....	29
10.4 Payments	29
10.5 Suspension of the time allowed for payment.....	30
Article 11 System and Service Baseline Support Activities performance monitoring.....	30
11.1 Supervision and access	30
11.2 Harmonisation.....	31
11.3 Early warning system.....	31
11.4 Project reviews and Meetings	32
11.5 Technical Audits	32
Article 12 Intellectual Property Rights	33
12.1 Foreground IPR	33
12.1.1 Patentable inventions.....	35
12.1.2 Waiver of Moral Rights.....	35
12.1.3 Transfer of Ownership.....	36
12.1.4 Protection of Foreground IPR and support to the European Commission....	36
12.1.5 Licence in Foreground IPR for the performance of the Contract.....	36

12.1.6	Additional Licence Options.....	37
12.2	Disclosure Or Use Of Information Generated By The Contractor Under The Contract.....	37
12.3	Sub-contractor arrangements.....	38
12.4	Background IPR.....	38
12.4.1	Notification.....	38
12.4.2	Ownership.....	39
12.4.3	Use and licensing in general.....	39
12.4.4	Use and licensing of Source Code protected by Background IPR.....	40
12.4.5	Modifications in software protected by Background IPR.....	41
12.5	Restrictive dissemination.....	41
12.6	Information supplied by the Agency to the Contractor.....	41
12.7	IPR owned by a third party.....	42
12.8	Infringements of Third Party IPR.....	44
Article 13	Items procured, developed or produced under the Contract.....	45
Article 14	Subcontractors.....	46
14.1	Subcontractors being involved in activities which present aspects relevant to EU and/or national security.....	46
14.2	Subcontractors being involved in activities which do not present aspects relevant to EU and/or national security.....	47
Article 15	Liquidated Damages.....	48
Article 16	Conflict of Interests.....	48
Article 17	Force Majeure.....	49
Article 18	Suspension of the implementation of the Contract.....	50
Article 19	Termination.....	50
19.1	General circumstances for termination.....	50
19.2	Voluntary termination by the Agency.....	51
19.3	Termination with fault of the Contractor.....	52
19.4	Termination due to Force Majeure events.....	54
19.5	Effects of termination.....	55
Article 20	Liabilities for damage caused to persons, goods or property.....	56
20.1	Damage and Injury to persons.....	56
20.2	Damage to goods and property.....	56
20.3	Cross waiver of liabilities for launch services and hosting services.....	56
20.4	Insurances.....	57
20.5	Product liability.....	57
20.6	Liability for indirect and consequential damage during the execution of the Contract.....	57
Article 21	Administrative Provisions.....	57
21.1	Processing of personal data.....	57
21.2	Agency's representatives.....	58
21.3	Communications.....	58
21.4	Invoicing.....	60
21.5	Bank Account.....	61
21.6	Publicity relating to Contracts.....	62
Article 22	Taxes and Duties.....	62
Article 23	Checks and Audits.....	63
Article 24	Applicable Law, Dispute Resolution, Jurisdiction.....	64
24.1	Applicable Law.....	64
24.2	Dispute Resolution and Jurisdiction.....	64
24.3	Arbitration.....	64
Article 25	Other legal provisions.....	64
25.1	Entire Agreement.....	65
25.2	Non waiver.....	65
25.3	Severability.....	65

25.4	Assignment Clause.....	65
25.5	Duration.....	68
Article 26	Limitation of Liability.....	68
ANNEX 1	FINANCIAL MATTERS.....	70
ANNEX 2	COMMON FRAMEWORK STATEMENT OF WORK.....	73
ANNEX 3	GALILEO EXPLOITATION PHASE SYSTEM SUPPORT MANAGEMENTREQUIREMENTS.....	74
ANNEX 4	GALILEO EXPLOITATION PHASE PROGRAMME SECURITY INSTRUCTIONS (PSI) AND SECURITY ASPECT LETTER.....	75
ANNEX 5	SPECIAL PROVISIONS FOR ESTEC FACILITIES.....	76
ANNEX 6	STATEMENT OF COMPLIANCE TO THE COMMON FRAMEWORK STATEMENT OF WORK.....	77
ANNEX 7	STATEMENT OF COMPLIANCE TO THE TENDER CONDITIONS.....	78
ANNEX 8	LIST OF THE AGREED BACKGROUND INTELLECTUAL PROPERTY RIGHTS.....	79
ANNEX 9	TEMPLATE FOR ESCROW AGREEMENT.....	80
ANNEX 10	CONTRACT CLOSE-OUT TEMPLATE.....	84
ANNEX 11	GALILEO SENSITIVE ITEMS LIST.....	85

Whereas

- 1) On 9 December 2015, the Agency launched, in the name and on behalf of the European Union, the Invitation to submit a Request to Participate (Step One) for a tender for Galileo System and Service Support for Exploitation Phase (Restricted Procedure), governed by the EU Financial Regulation¹ and Rules of Application² (as foreseen in Article 104(1)(b) of the former), through publication of the contract notice
- 2) The present Framework Contract was procured and is signed by ESA, in the name and on behalf of the European Commission, in the frame of the Delegation Agreement entered into by European Space Agency and the European Commission for the completion of the Galileo System deployment (hereinafter “the Delegation Agreement”).

For the fulfilment of these tasks the GSA (namely the European GNSS Agency) and ESA are negotiating the Galileo Working Arrangements whereby, in the frame of the exploitation phase ESA shall be entitled to make use of the System Support Activities and the GSA shall be entitled to make use of the Service Support Activities.

Consequently, appropriate contractual mechanisms have been agreed for the transition of this Contract from the deployment to the exploitation phase, foreseen in Article 25.4.

¹ Regulation (EU, EURATOM) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (EU Financial Regulation).

² Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

3) Following the selection of Thales Alenia Space Italia S.p.A. in the Step One phase for the Work Package 1 tendering process, the Candidate retained at Step One has been invited to submit its Offer in the full Invitation to Tender, as Restricted Procedure, for the final selection.

Now therefore the Parties agree as follows.

Definitions

Together with other definitions contained in the text of this contract, the following terms shall have the meaning specified for each of them below.

Agency: shall mean the European Space Agency and/or the European GNSS Agency, as relevant after the assignment as per Article 25.4.

Agency Representatives: shall mean the persons identified in the provision contained in Article 21.2. The Agency's Representatives may in any occasion be accompanied and supplemented by representatives of the European Commission.

Affiliates/Affiliated: shall mean any legal entity which is directly or indirectly controlling, controlled by or under common control of the Contractor provided that (i) such entity shall be considered an Affiliate only for the time during which such control exists and (ii) for the purpose of this definition "control" shall be constituted in case any of the following applies to either the legal entity or the Contractor in relation to each other: (a) holding, whether directly or indirectly, a majority of the voting rights, (b) holding, whether directly or indirectly, more than 50% (fifty per cent) of the share capital, (c) having the right to appoint or remove a majority of the members of the board of directors or other management body, (d) having, by agreement, the right to exercise a majority of the voting rights

Background Intellectual Property Rights or "Background IPR" all Intellectual Property Rights owned by the Contractor or the Contractor Parties, obtained prior to the execution of the present Contract or Intellectual Property

Rights owned by the Contractor and the Contractor Parties and developed outside the frame of this Contract, which are to be used by the Contractor or the Contractor Parties for or during the execution of the present Contract, including right relating to source code and documentation;

Commission: the European Commission;

Contract or Framework Contract: the present contract and all its Annexes which constitute integral and substantial part thereof;

Contractor: means the legal person which is party to this Contract;

Contractor Parties: Subcontractors at any tier and Affiliates to the Contractor and companies to which the Contractor is Affiliated ;

Contractual Baseline: consists of the documents listed in Article 2.1;

Core Team: Prime contractor and those subcontractors which are essential in order for the candidate to be in a position to meet the selection criteria;

Customer Undertakings means the undertakings to be provided by the Agency according to the provisions of Article 9.3;

Days: days are meant to be calendar days unless stated otherwise in the text (versus working days);

Deliverable Item(s): are defined in the Contractual Baseline (as updated from time to time) of the Contract and/or of the relevant Work Order;

Documentation: all media on which information or data of any description is recorded including all paper documents, and electronic communications whether in electronic or hard copy form;

EU Financial Regulation: means REGULATION (EU, EURATOM) 2015/1929 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union.

EU Rules of Application: means COMMISSION DELEGATED REGULATION (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

Effective Date: means the date present Contract shall come into force upon signature of both Parties' duly authorised representatives;

Foreground Intellectual Property Rights or Foreground IPR: means all Intellectual Property Rights, stemming from the execution of the present contract by the Contractor, including but not limited to all rights relating to work results, written analysis, documentation, reports, organisation and project plans, drafts, drawings, schedules, calculations, as well as any software, source code and object code, data bases and data base works, and interfaces. The definition comprises all phases and stages of development and includes also rights relating to modifications of and add-ons to the subject-matter of Foreground IPR, as well as modifications of and add-ons

to the subject-matter of Background IPR made by the Contractor in the frame of this Contract;

Galileo Programme: means the programme including the definition phase, the development and validation phase, the deployment phase, the exploitation phase and the full operation of the Galileo Global Navigation System

“Galileo Global Navigation System” is defined as the system of satellites and ground segments, comprising hardware and software, designed and operated to provide the Open service (OS), commercial service (CS), Public Regulated Service (PRS), search and rescue service (SAR) as defined in the Galileo Mission Requirement Document (MRD);

Intellectual Property Rights or IPR shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation done at Stockholm on July 14, 1967:

- “- 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”. For the sake of clarity, the definition of IPR includes but is not limited to rights related to all work results, written analysis, documentation, reports, organisation and project plans, drafts, drawings, schedules, calculations, as well as any software, in both source code and object code, data bases and data base works and interfaces.

Object Code: algorithms expressed in machine readable form, usually automatically compiled from Source Code, and used to command a computer;

Open Source Software: Source Code and Object Code owned by a third party made available worldwide under the terms and conditions of an open source software licence in accordance with the principles of the open source software initiative [<http://www.opensource.org/>];

Operator: a company or public body, including contractors, sub-contractors and consultants, charged directly or indirectly with the operation and maintenance (including upgrades, updates, etc.), of the GALILEO Global Navigation System or part of it;

System and Service Baseline Support Activities: the activities defined in Article 2;

System Baseline Support Activities: the activities described in Work Order No. 1 Statement of Work;

Service Baseline Support Activities: the activities described in Work Order No. 2 Statement of Work;

System and Service Additional Activities: Activities other than System and Service Baseline Support Activities, to be implemented according to Article 6;

Source Code: means the code for a computer programme expressed in human intelligible form which can be compiled automatically into Object Code by machine or software; it includes any related documentation;

Third Party IPRs: are Intellectual Property Rights /IPR, as defined above, which are neither owned by the Agency

nor the European Union nor the Contractor, which are to be used by the Contractor for and/or during the execution of the present Contract.

List of Acronyms:

CCN: Contract Change Notice

CCR: Contract Change Request

CISL: Contractual Items Status List

CU: Customer Undertakings

DIL: Deliverable Item List

EU: the European Union

ESA: the European Space Agency

GSA: the European GNSS Agency

FWC: Framework Contract

ESTEC: European Space Research and Technology Centre

FOC: Full Operational Capability

OLAF: Office Européen de Lutte Anti-Fraud or the European Anti-Fraud Office

IPR: Intellectual Property Rights

SETA: System and Service Baseline Support Activities

SOW: Statement of Work

Article 1 Scope of the Contract

The scope of the Contract consists of the provision of System Baseline Support Activities and Service Baseline Support Activities in accordance with this Contract and in the documents forming the Contractual Baseline (Article 2.1).

Article 2 System and Service Baseline Support Activities

The System and Service Baseline Support Activities including System Support Tools supply shall be performed in accordance with the following documents, including their Annexes and documents referred to therein.

2.1 Contractual Baseline

- a) This Contract;
- b) Any work order, once signed (**Appendix 1**);
- c) Financial Annex (**Annex 1**);
- d) The Framework Contractual Items Status List (**Annex 2**),
- e) The Galileo Exploitation Phase System Support Management Requirements (**Annex 3**)
- f) The Galileo FOC Programme Security Instructions (PSI) (not attached hereto but known to both Parties) shall always apply in its latest release version having immediate effect on its date of publication due to its public law stature and the Security Aspect Letter (**Annex 4**);
- g) Special Provisions for ESTEC facilities (including ESTEC Safety and Security Manual)(**Annex 5**);
- h) Statement of Compliance to the Common Framework Statement of Work (**Annex 6**) including its Applicable Documents

- i) Statement of Compliance to the Tender conditions (**Annex 7**)
- j) List of the Agreed Background Intellectual Property Rights (**Annex 8**)
- k) Template for Escrow Agreement (**Annex 9**)
- l) Close-out Certificate Template (**Annex 10**)
- m) Galileo Sensitive Items List, (**Annex 11**)

In case of conflict between such documents they shall prevail according to the order in which they are listed here-above.

All documents listed above shall apply in their latest agreed issue.

Article 3 Implementation of System and Service Baseline Support Activities

The System and Service Baseline Support Activities shall be implemented through Work Orders, according to the provisions under this Contract.

Except in cases of Force Majeure under Article 17 the Contractor may under no circumstances refuse to undertake Additional Work Orders or Work Order Amendments if such Additional Work Orders or Work Order Amendments are compliant with Article 2.1.

The signature of the present Contract confers no obligation on the Agency to conclude a Work Order. No Work Order will be concluded before the signature of the Galileo Working Arrangement.

Article 4 Price

The budgetary ceiling of the Contract is.....

Following the signature of the Working Arrangement, the budgetary ceilings of the Contract following assignment pursuant to Article 25.4 are foreseen therein.

Article 5 Price for System and Service Baseline Support Activities

Article 6 Work Orders for System and Service Additional Activities

What is a Work Order ??

Written order from the customer providing specific or blanket authorization to the contractor to proceed with the performance of the contract without further instructions and within the terms and conditions set forth in a Framework Agreement.

Upon request by the Agency and in accordance with the Management Requirements, the Contractor shall submit to the Agency a Work Order proposal, specifying the following elements:

- a. the activities covered by the Work Order proposal;
- b. staffing plan to be deployed for the execution of the Work Order proposal, identifying:
 - i. the individuals involved and their professional profile;
 - ii. the amount of time dedicated by each individual;
 - iii. the responsibilities allocated to each individual, with particular reference to the Contractor managers for the activities under the Work Order;
 - iv. technical milestones and deliverables associated to the Work Order;
- c. reviews to assess the achievement of the above mentioned technical milestones;

- d. criteria for the acceptance of the System and Service Additional Activities under the Work Order if different from the acceptance criteria under this Contract;
- e. duration of the Work Order;
- f. total price for the Work Order to be formulated pursuant to Article 7;
- g. milestone payment plan where payment milestones shall correspond to technical milestones or deliverables successful achievement.

The Agency reserves however the right to require the Contractor to address, in its Work Order proposal, additional elements, on a case by case basis.

Work Order proposals shall be considered as accepted by the Agency when a written confirmation is sent to the Contractor by the Agency's representatives defined in Article 21.2.

The implementation of System and Service Additional Activities shall be subject to the Work Order proposal acceptance by the Agency. If an agreement on the Work Order proposal is not reached within 60 days from the receipt by the Agency of such proposal, the proposal shall be considered rejected by the Agency.

Each Work Order shall be identified with progressive numbers.

The Contractor shall at all time secure availability of the manpower resources and the supply of the Deliverable Items required to perform all System and Service Additional Activities in the quality and quantity foreseen in the Work Order.

Article 7 Price for System and Service Additional Activities

.

Article 8 Changes to the Contractual Baseline

*What do we mean for contractual baseline ?? A "baseline" is an agreed description of the attributes and qualities of a product, usually at the beginning of a project or at a certain point in time, which serves as a basis for defining a future change of such product. A "change" is a movement from this baseline state to a next state. The identification of significant changes from the baseline state is the central purpose of **baseline** identification*

Changes can be of the following types:

- 1) a Work Order Amendment consisting of Changes affecting the implementation of the scope of the agreed Work Order(s) as defined by the applicable documents thereto, or
- 2) a change to the Contractual Baseline as defined in Article 2.1.

Additional Work Orders for System and Service Additional Activities shall in no case be interpreted as a Change for the purposes of the present Article.

8.1 Work Order Amendments

Amendments to the agreed Work Orders can be introduced at the request of the Agency, as a function of the development of the Galileo Programme, taking into consideration the development of works and services under the other Galileo FOC Procurement Work Packages. Amendment to the agreed Work Orders may affect both the scope and the schedule thereof.

8.2 *Changes to the Contractual Baseline*

Changes to the Contractual Baseline may be introduced upon written agreement between the Parties, according to the procedure under Articles 8.2.1 and 8.2.2 and to the extent allowed under the applicable law to this Contract, including the EU Financial Regulation and the EU Rules of Application.

8.2.1 *Changes introduced by the Agency*

Subject to Article 8.2, the Agency may at any time, by written order, request changes to the Contractual Baseline and the Contractor shall be obliged to implement such changes under the conditions specified below.

8.2.2 *Changes introduced by the Contractor*

The Agency may also accept changes proposed by the Contractor on his own initiative. If the Contractor deems a Change to be necessary, it shall serve a Contractor Change Proposal according to Article 8.2.1.

The preparation of the Contractor Change Proposal shall be at Contractor's costs.

8.3 *Financial consequences of changes to the Contractual Baseline*

9 General Conditions for System and Service Baseline Support Activities

9.1 *Professional duties*

9.2 *Staff*

9.3 *Customer Undertakings for System and Service Baseline Support Activities*

Customer Undertakings for the contractual Activities are described in the Customer Undertaking List annexed to the relevant Work Order.

Where items are supplied by the Agency or on its behalf to the Contractor, or its Sub-Contractors, the latter shall be deemed to have taken the item into custody and shall assume responsibility for it.

Failure or delay of the Agency to execute its undertakings shall not relieve the Contractor from fulfilling his obligations.

In such case the Contractor shall:

- i. notify the Agency of such circumstances no later than five (5) working days of its coming to notice, failing which the Contractor shall be precluded from making any claim towards the Agency in this respect;
- ii. analyse and present the impact of such delay or failure, if any, on the Work Order/s affected, propose mitigation actions, according to the provisions under Article 11.2 on early warning system and Article 8.1 on Work Order amendments and take all reasonable measures to eliminate or limit the consequences of the Agency's omissions or delays on its performance.

A late delivery of Customer Undertakings shall have no impact on the Contractor's price elements related to these contractual activities unless the Contractor can demonstrate that the amendments are necessary and reasonable to compensate for the consequences of the failure or delay by the Agency to execute its undertakings for System and Service Baseline Support Activities.

9.4 *Items Made Available By The Agency To The Contractor*

9.4.1 *Supply of items and Duty of Care*

If the Agency makes an item (e.g. hardware, software, services) available to the Contractor and the Contractor decides to make use of such items for the purpose of the Contract, the Contractor shall take responsibility for their proper handling, maintenance, transport, storage and ensure their proper use with the level of care to be expected from an expert professional and in accordance with the contractual requirements. Such items shall not be alienated or used for purposes other than those specified in the Contract.

The Contractor shall confirm to the Agency its decision to use the items. The Agency shall make the items timely available to the Contractor but shall have no responsibility for the suitability of the items for their intended purpose under the Contract or for their actual use.

9.4.2 *Transfer of risk*

The risk to any item made available by the Agency shall lie with the Contractor from the time the item is physically delivered to the Contractor at the agreed location until the time specified in the Contract. The replacement value for the item shall be specified, for insurance purposes, by the Agency.

9.4.3 *Liability for Damage*

The Contractor shall assume liability for loss of or damage to the item made available by the Agency caused by the Contractor and/or the Subcontractors, agents, consultants or any other entity/natural person appointed by the Contractor from the time the item is physically delivered to the Contractor at the agreed location until the time specified in the Contract.

9.4.4 *Ownership and Return obligations*

Unless otherwise specified in the Contract the ownership of the items remains with the Agency.

All the items made available to the Contractor shall be returned to the Agency after the execution of the Contract. The Contractor is obliged to return the item in the state it was when made available by the Agency.

9.4.5 *Inventory*

9.4.6 *Specific Conditions*

9.5 *Conditions of supply of the Deliverable Items*

9.5.1 *Time, place and quantity*

9.5.2 *Shipping Instructions, Handling and Storage*

9.5.3 *Export/Import Licenses/Permits*

The Deliverable Items or any part thereof may be subject to export laws and regulations (hereafter referred to as

"Export Regulations"), and the Parties acknowledge that diversion contrary to such Export Regulations is prohibited.

The Contractor shall be responsible for obtaining all export licences/permits and/or import licences/permits for all the Deliverable Items under the Contract for which they are required.

Notwithstanding any other provision of this Contract, the Contractor shall be liable for all damages, losses and liabilities incurred by the Agency as the result of the Contractor's non-compliance with its obligations under this Article 9.5.3.

The Contractor shall furthermore provide reasonable assistance to the Agency to comply with the applicable Export Regulations.

The Contractor may only be relieved from the above mentioned obligations in case it demonstrates that the sole cause of failure to comply therewith depends upon a Government decision.

9.5.4 *Transfer of ownership and risk*

Following successful Incoming Inspection as defined in the System Support PA & Safety Requirements³, the risk of any damage, accidental or not, to Deliverable Items shall lie with the party who has the item in custody at the time of occurrence of such accidental damage, unless the other party has otherwise assumed the responsibility. Notwithstanding the above, liabilities for breach of confidentiality obligations and/or Third Party IPRs, shall remain with the Contractor even after delivery and

³ Document reference GAL-REQ-ESA-SYST-X/0012

transfer of ownership of the Deliverable Items containing IPRs, as provided for in Article 12 hereafter.

Transfer of ownership of any Deliverable Item shall take place directly to the European Union upon the signature of the certificate of acceptance by the Agency, according to Article 9.5.5 below.

The Contractor undertakes to at all time keep Deliverable Items, including items under production, separate from other inventories and clearly identifiable for third parties as being the property of the European Union.

9.5.5 *Acceptance and rejection*

Deliverable Items shall be submitted to the Agency for acceptance according to the procedure specified in the above referred PA and Safety requirements.

Signature by the Agency of the consignment note upon delivery and inspection of the Deliverable Items shall be interpreted as simple acknowledgment that the delivery took place and not as recognition of the Deliverable Items conformity to the Contractual Baseline.

Conformity of the Deliverable Items shall be declared by the Contractor with the provision of a Certificate of Conformance issued in advance of the delivery.

Acceptance of the Deliverable Items shall be evidenced by Certificate of Acceptance issued by the Agency no later than 60 days after the date of delivery.

Deliverable Items shall be deemed to have been accepted unless written rejection notice is received by the Contractor within 60 days after receipt or such further period as may be communicated by the Agency.

The Contractor shall be liable to the Agency for any lack of conformity to the requirements as defined in the Contractual Baseline which exists at the time of acceptance. In case of lack of conformity, without prejudice to Article 9.5.6, the Agency shall be entitled:

- i. either to have the Deliverable Items brought into conformity, free of charge, by repair or replacement, as per the applicable PA and Safety requirements on non-conforming items, or
- ii. to have an appropriate reduction in the price of the Deliverable Item.

Any repair or replacement shall be completed within a time communicated by the Agency and without any significant inconvenience to the Agency, taking account of the nature of the Deliverable Items and the purpose for which they are required by the Agency.

The Contractor shall be liable to the Agency for any lack of conformity of software which exists at the time of provisional or final acceptance. In case of lack of conformity, without prejudice to Article 9.5.6, the Contractor shall fix all errors and non compliances.

For the sake of clarity, sections i and ii of Article 9.5.5 here-above shall be understood as complemented by the Contractor's obligations identified, amongst others, under Article 12.7.

Any dispute between the Parties as to the acceptance of the Deliverable Items shall be referred for settlement to the Contract Appeal Board according to Article 24.2, if agreement cannot be reached by the Parties representatives defined in Article 21.2 within twenty (20) working days of an Agency decision.

If such Contract Appeal Board can not settle the dispute within twenty (20) working days from the date on which the decision has been referred to the CAB, the matter shall be referred to arbitration according to Article 24.2.

Under no circumstance the Contractor shall be entitled to suspend the supply of Deliverable Items, pending the decision of the Contract Appeal Board or the arbitration award.

9.5.6 Warranty

Article 10 Prefinancing, Payments, and Payment Suspension

Article 11 System and Service Baseline Support Activities performance monitoring

Article 12 Intellectual Property Rights

What is an IPR ??

Intellectual Property Rights or IPR shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation done at Stockholm on July 14, 1967:

- 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”. For the sake of clarity, the definition of IPR includes but is not limited to rights related to all work results, written analysis, documentation, reports, organisation and project plans, drafts, drawings, schedules, calculations, as well as any software, in both source code and object code, data bases and data base works and interfaces.

In the performance of the Contract the following provisions relevant to information, data and intellectual property rights shall apply to the Contractor, the Contractor Parties and, as relevant, to Third Parties.

The following provisions relevant to information, data and intellectual property rights shall apply for the whole duration of the respective Intellectual Property Rights protection.

12.1 *Foreground IPR*

Notwithstanding the provisions contained under Article 9.5.5, and without prejudice to the specific procedure regarding patents foreseen in Article 12.1.1 below, all Foreground IPR shall be vested in the European Union and, wherever possible, clearly identified as Intellectual Property Right from the moment of its generation.

Where immediate acquisition of ownership by the EU is not legally possible, the Contractor shall permanently assign to the European Union full ownership of all Foreground IPR, at the moment of its successful Acceptance (as per Article 9.5.5).

The rights permanently assigned to the European Union shall include, but not be limited to, the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time and purpose.

The European Union may permanently or temporarily transfer all or single rights granted to the European Union in whole or in part to a Third Party in its sole discretion.

The European Union may in its sole discretion distribute the subject matter of the Foreground IPR under any open

source licence the European Union deems fit and this shall include also the right for the European Union to grant such rights to another organisation which will distribute the software under an open source license.

The European Union may, against payment or free of charge, permanently or temporarily, grant exclusive or non-exclusive licenses or sublicenses for all or single rights granted to the European Union in whole or in part to a Third Party in its sole discretion, either directly by the European Union or indirectly by a distributor.

Notwithstanding that the Contractor has granted to the European Union exclusive rights, the European Union shall not be obliged to exercise the rights granted and the European Union shall be entitled to decide in its sole discretion to exercise all or parts of the rights granted hereunder.

The European Union may make use of the Foreground IPR in any known manner and for any known type of use, as well as all yet unknown types of use. For the avoidance of doubt, no additional royalty fee shall be paid by the European Union for such use.

The intended purpose of the permanent assignment of full ownership of all Intellectual Property Rights to the European Union is to enable the European Union to act as the full and only owner of the Foreground IPR without any limitation. Therefore, subject to the condition that under the law applying to the Contract a permanent assignment of some or all IPR is lawfully not possible, the Contractor agrees to and herewith directly upon signature of this Contract grant to the European Union an irrevocable and worldwide exclusive license for the Foreground IPR, including the grant of the exclusive and perpetual usage, distribution and exploitation rights, not

restricted in respect of territory, time or purpose and including all the rights as listed in this Article. For the avoidance of doubt, no royalty fee shall be paid by the European Union for such license grant.

In case the Contractor modifies, enhances or makes another alteration to an existing IPR of the Agency, the European Commission or of GSA, the Foreground IPR is any incremental work of such pre-existing product constituting modifications, corrections, additions, extensions or improvements to the pre-existing product or any translation of the pre-existing product as a result of Contractor's services. Incremental work shall, for this purpose, means everything gained or added to the pre-existing product. Such Agency/EU Background IPR shall be identified separately in the Contract and the provisions contained in this Article 12 concerning Foreground IPR shall be fully applicable thereto.

Likewise, in case the Contractor shall modify, enhance or make another alteration to an existing IPR developed under a contract with ESA, the European Union or with the GSA, and the Contractor has identified such pre-existing product to be used the activities under this Contract, as Background IPR, the Foreground IPR is any incremental work of such pre-existing product constituting modifications, corrections, additions, extensions or improvements to the pre-existing product or any translation of the pre-existing product as a result of Contractor's activities. Such Agency/EU Background IPR shall be identified in the Background IPR list as originating from an ESA/EU/GSA contract for which the Contractor retains the IPRs. The provisions contained in this Article 12 concerning Background IPR shall be fully applicable thereto.

12.1.1 Patentable inventions

Patentable inventions shall be notified by the Contractor to the Agency without delay as soon as the Contractor becomes aware that such invention has been made. Such notification shall contain at least a description of the invention, an initial assessment of patentability by the Contractor and the contractor's technical assessment of the programmatic value of the invention. The Contractor shall take measures to ensure that the invention is not disclosed.

The Commission shall make a decision whether it wishes to make a patent application and if so, will proceed with filing an application. The Contractor shall provide required technical support as foreseen in Article 12.1.4.

12.1.2 Waiver of Moral Rights

12.1.3 Transfer of Ownership

12.1.4 Protection of Foreground IPR and support to the European Commission

The Contractor shall keep secret and confidential the subject matter of the Foreground IPR in order to ensure that:

- i. only and exclusively ESA, GSA and the European Commission, as legal representative of the European Union, are aware of and know such intellectual property and
- ii. novelty requirements in accordance with the applicable intellectual property legislation as well as any other conditions required by the legislation, are secured and met.

The Contractor where the copyright, invention or any other IPR originated, shall not take any action which jeopardises or affects the ability of the European Union to legally protect the subject matter of the Foreground IPR.

In particular, the Contractor shall notify the Foreground IPR and specify any rights that may be subject to notification, registration or similar requirements for IPR protection or additional IPR protection, such as patents and trademarks, to the Agency and the European Union in order to enable the European Union to take adequate measures to protect such Foreground IPR in the name and on behalf of the European Union.

The Contractor shall take any and all measures, including, as the case may be, specific agreements with its employees, subcontractors and other collaborators in order to ensure that the above mentioned provisions are at all times duly fulfilled and that there are not third parties rights that could hamper, limit, restrict or in any way render more difficult the full use and exploitation of the Foreground IPR and its subject matter by ESA, GSA the European Commission.

The Contractor shall upon request provide technical support to the Commission and to experts appointed by it, for matters related to the protection and filing of the Foreground IPRs

12.1.5 Licence in Foreground IPR for the performance of the Contract

The Agency on behalf of the European Union grants hereby to the Contractor a non-exclusive, non-transferable, free of charge licence of use of the subject-matter of the Foreground IPR, with the right to grant sublicences to the Contractor Parties, for the entire duration of this Contract and for the only purpose of

performing its obligations under the Contract, provided always that the sublicences also reflect all obligations, such as but not exclusively confidentiality obligations, deriving from this Contract.

The licence only refers to the use of the subject-matter of the Foreground IPR and does not refer to or cover anything subject to Third Party IPR that may be contained in or combined with such subject-matter in any form. The Contractor bears the sole responsibility for ensuring that all Third Party IPR is licensed properly. Article 12.1.4 applies accordingly. In particular the Contractor guarantees that he is compliant with all licence conditions of the respective providers and owners of Third Party IPR. In case of any claim based on an alleged infringement of such Third Party IPR, the Contractor is obliged to indemnify the European Union, the European GNSS Agency and the European Space Agency on the basis of Article 12.1.5.

The licence attributes to the Contractor all rights which are necessary to fulfil the above mentioned purpose.

The contract price agreed upon by the parties covers all fees for the granting of IPR licences and also includes the licence grant for the use of Foreground IPR according to this Article.

12.1.6 Additional Licence Options

12.2 Disclosure Or Use Of Information Generated By The Contractor Under The Contract

12.3 Sub-contractor arrangements

The Contractor shall ensure in his contractual arrangements with his agents, assigns, freelancers and any Affiliates that the Foreground IPR under the respective sub-contract shall be vested in the European Union in accordance with the provisions of this Article 12. To that effect, the Contractor shall submit to the Agency prior to the start of work of any agents, assigns, freelancers and any Affiliates the part of the respective sub-contract pertaining to this particular point. Submission of such sub-contracts to the Agency does not relieve the Contractor of its obligations to comply with the provisions of Article 12.

12.4 Background IPR

12.4.1 Notification

The Contractor undertakes that all Intellectual Property Rights employed during the execution of this Contract are treated as arising from work performed under this Contract.

Any and all Background Intellectual Property Rights agreed and recognised by the Agency is specified under attached annex to this Contract (“Annex 8 - the List of agreed Background IPR”).

The Contractor agrees that he shall not make claims under this provision during the execution of this Contract or any time thereafter. This shall not apply in cases where the Agency has formally granted its prior written approval for the use of the specific Background IPR within this Contract. This approval is valid only if recorded in a new issue of the List of Background IPR annexed hereto, via a CCN agreed by both Parties. In case the Contractor or any of the Contractor Parties intends to use or re-use already existing software for which he or any of his

relevant Contractor Parties owns the Intellectual Property Rights, all of the following additional information shall be provided as part of the approval request:

- i. Whether or not the respective software has been developed under an ESA or EU (including EC Agency) Contract, and if so:
- ii. Contract numbers under which the software has been developed and/or altered,
- iii. The rights granted by the Contractor/any Contractor Party to any Third Party as part of other contractual agreements.

Notwithstanding the above, in case of use of Third Party IPR in addition to the Background IPR identified, the information identified in Article 12.7 here-after shall also be provided in addition to the information above.

12.4.2 Ownership

The owning party shall retain the applicable Background IPR and no representation or act by a party during performance of the Contract shall indicate or be construed as providing any other right, title or interest in such Background IPR other than in accordance with this Contract.

Upon request, the Contractor or Sub-the Contractor Parties shall offer the Agency the possibility to acquire the rights to the relevant software as Foreground IPR including all exclusive rights as described in Article 12.1 above. In case of software developed or altered under an ESA, GSA or EU contract, this shall apply to those rights which have not already been granted to ESA, GSA or to the EU under such former contract.

12.4.3 Use and licensing in general

The Contractor, upon signature of the Contract and within the price of the Contract, hereby grants to the European Union, the Operator, GSA and ESA a non-exclusive, perpetual, irrevocable, royalty free licence, not limited as to time, territory and space , including the rights to transfer and to grant sub-licences, with immediate effect and for the duration of the Contract or of the respective IPR protection (whichever is longer) and for the purposes of using the subject-matter of the Background IPR in all manners which are necessary for the development, operation, maintenance, service provision and future evolutions of or any other use within the EU or ESA GNSS programme,

12.4.4 Use and licensing of Source Code protected by Background IPR

12.4.5 Modifications in software protected by Background IPR

12.5 Restrictive dissemination

12.6 Information supplied by the Agency to the Contractor

12.7 IPR owned by a third party

The Contractor guarantees that the work resulting from this Contract, the transfer of ownership and the licences granted under this Contract will not infringe any Intellectual Property Right of any Third Party.

In case of an infringement of any Third Party IPR, Article 12.8 shall apply.

If the Contractor, in order to perform its obligations under the Contract needs to have access to intellectual property owned by a third party it shall ensure that the owner of such intellectual property grants a free of charge, irrevocable perpetual, worldwide licence to ESA, the GSA and the European Union, with the right to grant sublicences, to enable the development, its use, operation, exploitation and provision of EU GNSS services for the entire duration of the IPR protection period..

Where the Commercial Off-the Shelf (COTS) products are concerned and the standard licence terms of the third party vendor apply, such licence shall grant to ESA, GSA and the European Union the right and licence to use such COTS products for the purpose of this Contract, excluding any rights of sub-licence. Should ESA, the European Commission or the GSA require to sublicense the Third Party IPR, the Contractor shall take such actions as are reasonably required to procure the right to sublicense from the concerned Third Party.

When the Contractor procures software, where the intellectual property rights are owned by a third party, and this software is an element of software deemed for use by an Operator, the Contractor shall in order to facilitate maintenance and safeguard against obsolescence, secure the Source Code under escrow agreement (according to the template enclosed under Annex 9 hereto) for the case that the third party abandons the development and maintenance of the procured software. It is understood that the price for the protection of the source code under escrow agreement

and any related cost shall be included in the Work Order price.

When the Contractor procures software which is subject to Third Party IPR or in any way linked to or connected with software subject to Third Party IPR, and the software subject to Third Party IPR is made available under an Open Source Software (OSS) Licence, the Contractor shall ensure that the OSS Licence does not require him to apply the terms and conditions of such licence on his own developments or any developments within the frame of this contract. If the OSS Licence requires so, the Contractor may not procure or otherwise use the software under the OSS licence for any contractual purpose.

The Contractor guarantees that all items, in any format (both in a tangible or intangible form), delivered to ESA, GSA, European Union or Operator and/or stemming from this Contract by any other means, include all necessary licences for the use and purposes as described in this Contract, and in particular, without limitation, Article 12.1 and Article 12.4.3. The Contractor guarantees, that with any partial, intermediate or final delivery of all items, in any format, delivered to ESA, GSA, the European Union and/or the Operator and/or stemming from this Contract by any other means, no additional costs arise either for ESA, GSA, the European Union and the Operator from the delivery of items or any other use of Third Party IPR within the frame of this Contract.

Notwithstanding the above, with regard to software protected by Foreground IPR or Background IPR, the Contractor undertakes to perform a due diligence search in order to determine if there are existing Third Party IPR which could be infringed by any use of such software by ESA, GSA, the European Union and/or the Operator.

Before any partial, intermediate or final delivery, the Contractor shall have the responsibility to remedy design elements that infringe existing Third Party IPR.

At the moment of any partial, intermediate or final delivery, including all installations for operational purposes in the frame of this Contract, of any object containing IPR and also prior to the Final Acceptance the Contractor shall verify and confirm in writing that the subject-matter of both the Foreground IPR and the Background IPR does not infringe any Third Party IPR and that the licence (under which a Third Party Product shall be licensed under this Contract) complies with this Contract. In the case of failure of such written declaration, the Agency reserves the right to consider the delivery unsuccessful, in which case the Agency and European Union will not make any declaration of Acceptance with regard to the respective delivered item. Neither the failure to comply with this duty of verification and/or confirmation nor any acceptance by the Agency of the Deliverable Item relieves the Contractors from his obligations and responsibilities for breach of Third Party IPRs under this Contract.

12.8 Infringements of Third Party IPR

The Contractor shall indemnify ESA, GSA, the European Union and/or the Operator from and against all claims, proceedings, damages, costs and expenses arising from the alleged infringement of Third Party IPR in the frame of this Contract, except in the case where such alleged infringement stems from the use of IPR provided by ESA, GSA or the European Union under this Contract as Customer Undertakings.

The above includes the Contractor's obligation to indemnify and hold harmless at first instance the Agency

and European Union and the Operator against all claims and/or legal proceedings made in or out of Court including all legal costs for court attorneys and or arbitration.

This applies from the moment of the first notification of any alleged infringement.

Without prejudice to the above, the Agency and the Contractor shall notify each other without undue delay of any identified risk of Third Party IPR infringement or of any dispute arising over ownership or use of Intellectual Property Rights that arises from the performance of the Contract or which is required for completion of the Contract or which relates to any product, use, application or result of the Contract.

The Contractor shall ensure that all required information is provided to the Agency and that any measure is immediately taken in order to mitigate and remedy the above risk and/or infringement without any additional cost for ESA, GSA and European Union.

Article 13 Items procured, developed or produced under the Contract

Article 14 Subcontractors

The Contractor shall perform its tasks under the Contract by making use of the Subcontractors agreed and listed in Annex per applicable Work Order. The percentage of the participation of Subcontractor in each Work Order shall not be modified by the Contractor.

The Contractor shall take full responsibility for actions, omissions and performances of its Subcontractors,

employees and consultants, ensuring constant and effective management, coordination and communication with them.

Under no circumstances may the subcontracting release the Contractor from its obligations, representations and warranties under the Contract.

Following the signature of this Contract, the Contractor may only subcontract to additional or different Subcontractors any part of the Contractor's obligations under this Contract upon prior written approval by the Agency.

The additional or different Subcontractors shall at all time comply with the following requirements:

14.1 Subcontractors being involved in activities which present aspects relevant to EU and/or national security

14.2 Subcontractors being involved in activities which do not present aspects relevant to EU and/or national security

Article 15 Liquidated Damages

Should the Contractor fail to comply with the "penalised milestones/deliverables" identified in the Work Order, it shall be liable to pay liquidated damages.

For every day of breach, the rate of liquidated damages shall be 0,2% of the penalised value identified in the Work Order.

Under no circumstances shall the amount of liquidated damages exceed the penalised value as specified in the respective Work Order. Liquidated damages shall in such case constitute *ex ante* calculated damage due to breach of the Contractor.

Liquidated damages to the Contractor shall apply, even in the event the Contractor meets the delivery date on which the documents need to be delivered or the service need to be rendered, or perform within the defined period(s), if the Deliverable Item, service, etc. is subsequently rejected by the Agency in accordance with Article 9.5.5 "Acceptance and rejection". In such a case, liquidated damages would apply with effect from the date on which the delivery and/or the service is due.

Liquidated damages shall apply without prejudice to any other remedy provided for in the Contract.

Where liquidated damages are due, the Agency may reduce or recover payments proportionately.

Article 16 Conflict of Interests

Article 17 Force Majeure

Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting Parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force

majeure unless they stem directly from a relevant case of force majeure.

If either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects. The party claiming force majeure shall bear the burden of proving the existence duration and consequences of force majeure.

Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. If the delay caused by the occurrence of the force majeure event persists for more than one (1) month from the force majeure event occurrence, the Parties shall negotiate in good faith whether the Contract continues to be viable. If the negotiation within 10 days leads to a conclusion that is not mutually acceptable by the Parties, or in case where either resuming implementation is impossible or the necessary ensuing amendments to the Contract or a Work Order would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors, the Agency shall have the right to terminate this Contract according to the following Article 19.2 by giving written notice of termination. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

The contracting Parties shall take the necessary measures to reduce damage to a minimum. Each party shall bear any additional cost it incurs as a result of force majeure events.

Article 18 Suspension of the implementation of the Contract

Article 19 Termination

19.1 *General circumstances for termination*

The Agency shall have the right at any time to terminate this Contract, or any Work Order including the procurement of additional System and Services Support Activities, either wholly or in part, in the following general circumstances:

- i. a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the Contract or substantially modify the conditions under which the Contract was initially awarded.
- ii. if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in point (a) of Article 106(1) of Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union as amended by Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015.

If the Agency intends to terminate the Contract for any of the reasons listed above it shall formally notify the Contractor of its intention specifying the grounds thereof.

The Agency shall invite the Contractor to submit any observations regarding the correctness of the alleged termination reason within 30 (thirty) Days from receipt of the notification.

If the Agency does not confirm acceptance of the observations by giving written approval within 30 (thirty) Days of receipt, the Contract shall be intended as terminated.

19.2 Voluntary termination by the Agency

Without prejudice to any other grounds for termination, the Contract or a Work Order (in whole or in part), including the procurement of additional System and Services Support Activities, may be subject to voluntary termination by the Agency. If the Agency wishes to terminate the Contract voluntarily, it shall give notice to the Contractor stating:

- i. that the Agency is terminating the Contract under this Article; and
- ii. that the Contract will terminate indicated in the Agency's notice, in any case not earlier than three months after the date of receipt of the notice.

In the case of termination under this Article, the Contractor shall on receipt of the Agency's instructions, forthwith take the necessary steps to implement them. The period to be allowed to implement them shall be fixed by the Agency after consultation with the Contractor and, in general, shall not exceed three months.

Subject to the Contractor conforming with the instructions referred to above, the Agency shall take over from the Contractor at a fair and reasonable price all finished parts not yet delivered to the Agency, all unused and undamaged material, bought-out components and articles in the course of manufacture in the possession of the Contractor and properly obtained by or supplied to the Contractor for the performance of the contract, except such materials, bought-out components and

articles in the course of manufacture as the Contractor shall, with the agreement of the Agency, elect to retain.

- a. The Agency shall indemnify the Contractor against such part of any loss of profit as is attributable to the termination of the Contract and against any damage resulting from the termination of the contract, in particular against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor and are related to the Contract, in so far as the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. The Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments.
- b. The amount of compensation payable under sub-clause 19.2 a) shall be fixed on the basis of evidence produced by the Contractor and accepted by the Agency. It shall take account of the proportion of the Contract completed and shall be consistent with the provisions of sub-clause 19.2.

Advances or progress payments are not final payments and shall be deducted from the sums due to the Contractor in case of termination under this Article.

The Agency shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the contract, exceeds the total price for the work set forth in the Contract.

The ownership of all materials, parts and unfinished work paid for by the Agency under the provisions of this contract shall be vested in or transferred to the European Union as soon as they have been paid for.

Except in the case of sub-contracts of small value or of short duration, the Contractor shall reserve the right to cancel any sub-contract, placed by him for the purposes of the Contract, in conditions which, should his Contract be cancelled under the provisions of this Article 19 shall permit him to comply with the requirements of this Article.

Subject to any mandatory provision of law, the compensation payable under this Article shall be the sole remedy of the Contractor against the Agency on voluntary termination of the Contract by the Agency.

19.3 Termination with fault of the Contractor

19.3.1 Definition of Contractor Default

Contract Default shall mean one of the following events, subject always to the provisions of this Contract:

- a. if the Contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in point (b) of Article 106(1) of Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union as amended by Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015
- b. if the Contractor or any related person, taking into account the principle of proportionality and the seriousness of the breach, is subject to any of the situations provided for in points (c) to (f) of Article

106(1) or to Article 106(2) of of Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union as amended by Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015

- c. if the procedure for awarding the Contract or the implementation of the Contract prove to have been subject to substantial errors, irregularities or fraud;
- d. where the Contractor is in breach of its obligations under Article 16 (conflict of interest);
- e. where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;
- f. where the Agency has evidence that the Contractor or natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- g. the Contractor fails to deliver the Deliverable Items within one hundred and fifty (150) days after the Delivery Dates set forth in this Article 9.5 (Conditions of supply of the Deliverable Items) (as such date may have been modified in accordance with the Contract);
- h. If the Contractor is in material breach of the GALILEO Programme Security Instruction;
- i. The Contractor has used for the performance of the present activity an Open Source Software Licence which does require him to apply the terms and conditions of such licence on his own development. If the deliverables contain any third party product for which the Agency has not given its prior written approval, such deliverables shall not be considered in compliance with the Contract;

- j. If, after a default notification, the Contractor has failed to make adequate progress in the first ninety (90) days such as the Contractor will not be able to deliver within 150 days after the Delivery dates set forth in Article 9.5.1;
- k. is considered negligent in performing its contract obligations, and in particular refuses or fails to observe or perform any material duty or obligation in the Contract, or Work Order, except those obligations of Contractor for which particular remedies are specified elsewhere in the Contract or Work Order as being exclusive.
- l. if, due to a change of circumstances, the Contractor or Contractor Parties do not comply anymore with the Participating Conditions identified in the Conditions of Tender for Step One and has not promptly taken the necessary actions (by way of e.g. and including, but without limitation to, submitting a justified request for waiver or a contract change as per Art. 8) in order to remedy such non-compliance

The Contractor shall notify the Agency in writing of the occurrence, and details, of any Contractor Default and of any event or circumstance which is likely to constitute or give rise to a Contractor Default, promptly on the Contractor becoming aware of its occurrence.

On the occurrence of Contractor Default in respect of which, in the opinion of the Parties acting reasonably, the damage caused by such Contractor Default is irremediable, or within a reasonable time after the Agency becomes aware of the same, the Agency may serve a prior written notice on the Contractor specifying the nature of the Contractor Default and the Contract or Work Order will terminate as of the date indicated.

On the occurrence of Contractor Default in respect of

which, in the opinion of the Parties acting reasonably, the damage caused by such Contractor Default is remediable, or within a reasonable time after the Agency becomes aware of the same, and while the same is subsisting, the Agency may serve a notice (a "**Rectification Notice**") on the Contractor, requiring the Contractor at the Contractor's option, either to:

- i. rectify the Contractor Default referred to in the Rectification Notice (if the same is continuing) within the time period specified in such Rectification Notice; or
- ii. submit, within the time period specified in such Rectification Notice, a detailed plan (a "**Rectification Plan**") for rectifying the Contractor Default, which shall specify in reasonable detail the manner in, and the latest date by, which such the Contractor Default is proposed to be rectified.

If the Contractor either rectifies the damage caused by the Contractor Default within the time period specified in the relevant Rectification Notice, or implements the Rectification Plan agreed or determined in respect of such Contractor Default in accordance with its terms, the Rectification Notice will be revoked and the Contract will continue.

If the Contractor fails to:

- i. rectify the damage caused by the Contractor Default within the time period specified in the Rectification Notice; or
- ii. implement the Rectification Plan agreed or determined in respect of such Contractor Default in accordance with its terms, or if the Rectification Plan is rejected, the Agency may notify a termination notice to the Contractor.

The costs related to rectification activities shall be incurred by the Contractor up to the limit of liability under Article 26.

19.4 Termination due to Force Majeure events

In case of termination due to force majeure events, the Contractor shall retain the amounts already paid by the Agency with the exception of the pre-financing which shall be refunded partially or in total to the Agency following settlement based on cost incurred evidenced by the Contractor:

- i. for the supply of equipment or material: The contractual value of items delivered under the Contract before receipt of notification of termination.
- ii. for services: a fair and reasonable price in respect of such work as has been carried out prior to the receipt of notification of termination.

19.5 Effects of termination

On receipt of the notification of termination under this Article 19, the Contractor shall:

- i. take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments,
- ii. carry out any hand back activities and fulfil the hand back obligations specified under a Hand Back Plan to be agreed with the Agency upon the Agency's request. Such obligations shall be performed within the time limit specified in the Hand Back Plan.

In case of termination for Contractor Default:

In addition to termination of the Contract, or Work Orders, including the procurement of Additional System and Services Baseline Support Activities, the Agency may request reimbursements of payments made on the basis of the false declarations and/or illegal activities referred to in par. 19.3.1 above.

The Contractor further agrees and accepts that the the Agency or the European Union may, in this event or in any other event of irregularity or fraud, take any further necessary action (including prosecution) to recover such unduly paid funds.

The termination of the Contract, or Work Orders, including the procurement of Additional System and Services Baseline Support Activities, shall not affect or cancel the obligation of the Contractor to provide warranty support in accordance with Article 9.5.6 "Warranty".

Further, the Agency may at its discretion:

- a. have the work performed under its direct responsibility in which case the Contractor shall be charged with all additional costs arising out of this solution;
- b. have the work performed by way of a replacement contract with a third party, in which case the Contractor shall be charged with all additional costs arising out of this solution;
- c. have the work terminated, in which case the Agency shall be entitled to full compensation for the damage caused by lack of delivery.

In the cases referred to in paragraphs a) and b) above, and in order to ensure completion of the supply of the goods and/or services, the defaulting Contractor shall, where the use of intellectual property rights is required, do everything in his power to enable the new Contractor or the Agency to use the rights concerned. The defaulting Contractor shall make no claim in respect of such use, and shall bear the cost of the fees due to third parties for the use of their rights.

If, after termination with fault of the Contract, of Work Orders including the procurement of additional System and Services Baseline Support Activities under this Article, it is determined by mutual agreement of the Parties or in accordance with Article 24.2 “Dispute Resolution and Jurisdiction” that the Contractor was not in default under the provisions of this Article, the Contractor shall be entitled to direct damages caused by the wrongful default termination calculated in accordance with Article 19.2 - “Voluntary termination by the Agency”.

Article 20 Liabilities for damage caused to persons, goods or property

20.1 Damage and Injury to persons

Any damage and/or injuries, including death occurring to the personnel of one of the Parties and/or of the Commission in the course of the performance of the present Contract shall remain under the responsibility of the respective employer, except for gross negligence or wilful intent from the part of the other Party or the Commission, who becomes the sole liable Party.

These provisions are limited to the relationships between the Parties (including the Commission) in the frame of the present Contract and do not affect the rights and claims which may arise from the victims of such damages or injuries or from their family or from the social security organisms in accordance with the applicable Law.

20.2 Damage to goods and property

Any damage caused to the Property of one of the Parties and/or of the EU in the course of the performance of the present Contract shall remain under the responsibility of the Party having the care and custody of the goods at the time of occurrence of the damage, unless such damage is caused by negligence or wilful intent from such other Party or the Commission.

20.3 Cross waiver of liabilities for launch services and hosting services

The Agency has already entered into or will enter into a Hosting services agreement with the chosen Hosting services providers/Operator and with Launch Service Provider(s). The hosting services/Operations agreement and Launch Service Agreement will contain a cross-waiver of liability between the Parties with an obligation to apply “mutatis mutandis” the same cross-waiver of liability to each Party’s contractors and Subcontractors.

Accordingly the Contractor undertakes not bring legal action or any other claim against the hosting service provider/s or the launch services provider/s for damages sustained by him and arising out of the performance of the Hosting services/Operations and/or Launch service agreements.

The Contractor undertakes furthermore to hold the Agency harmless against all claims of third parties arising from the failure to comply with the rules and regulation applying for a specific Site to be accessed for the performance of the present Contract.

20.4 *Insurances*

The Contractor shall take out insurance against risks and damage relating to the performance of the Contract if required by the relevant applicable legislation. All insurance shall contain provisions of non recourse for insurers against the parties and the launch service provider.

A copy of all the relevant insurance contracts shall be sent to the Agency should it so request.

20.5 *Product liability*

The Contractor shall be liable for any claim from a third party based on product liability or product safety. The Contractor shall give prompt notice to the Agency or the EU about such claim from a third party. For the avoidance of doubt the Contractor shall not be liable and the Commission shall hold him harmless from any claim in product liability not strictly related to the deliverables under the contract, including, but not limited to possible claims in product liability related to the Galileo signal in space.

The Contractor shall at his expense defend any actions brought against him with regard to such claims (and shall pay all reasonable expenses and satisfy all judgments). The Agency and the Commission undertake to assist the Contractor if such action is brought against him with reasonable co-operation and assistance and to provide

such relevant information for the Contractor's defence as is available to them.

20.6 Liability for indirect and consequential damage during the execution of the Contract

Except in case of gross negligence and wilful misconduct, the Parties shall not be liable towards each other for any indirect or consequential damages sustained by the Parties arising from and during the execution of the Contract and related Work Orders.

Article 21 Administrative Provisions

21.1 Processing of personal data

21.2 Agency's representatives

21.3 Communications

21.4 Invoicing

Agency-specific provision following assignment (GSA):

21.5 Bank Account

21.6 Publicity relating to Contracts

Article 22 Taxes and Duties

Article 23 Checks and Audits

Article 24 Applicable Law, Dispute Resolution, Jurisdiction

24.1 *Applicable Law*

The Contract is governed by Union law, complemented, where necessary, by the law of Belgium.

What is the Union Law ?

European Union law is a body of treaties, law and court judgments which operates alongside the legal systems of the European Union's member states. Whenever there is a conflict between EU law and national law, EU law takes precedence over national law and is binding on all national authorities. The European Commission is the institution responsible for ensuring EU law is applied throughout all member states.

The law does not provide for specific remedies to be available in national courts in case of infringements of EU law. The European Court of Justice (ECJ) has had no opportunity to develop such remedies since it cannot itself adjudicate on complaints by individuals that rights under EU law have been violated. However, ECJ has provided for judicial protection of EU rights by laying down some general principles regarding the adequacy of national laws on remedies. These include the principle of equivalence of EC law remedies to national remedies, and the requirement that remedies for infringements of EC law be effective. Different national legal systems provide a variety of remedies for infringements of laws in the field of employment and industrial relations.

European Union Laws were formerly known as European Community laws

This Contract shall be interpreted giving priority to the provisions set forth in the contractual baseline documents. In case of aspects of the contractual baseline which are unclear or not ruled by the above mentioned documents the Parties will make reference respectively to the provisions of EU Financial Regulation and EU Rules of

Application in the first place and to Belgian Law in the second place.

24.2 Dispute Resolution and Jurisdiction

Any disputes arising out of the interpretation or execution of the Contract may, at the request of either party, be submitted to the "Contract Appeal Board" (CAB).

The CAB shall consist of two high-level representatives of each party, to be nominated by the Agency and the Contractor through an exchange of letters. One representative shall be from the technical side, the other from the administration side. The CAB representatives shall not include the representatives nominated in Article 21.2 or the Contractor's representatives identified in Article 21.3.

Within two months of the submission of the dispute, the board shall either arrive at a unanimous agreement or establish that a disagreement continues to exist.

24.3 Arbitration

All disputes arising out of or in connection with the present Contract which are not settled by the CAB according to the provisions above, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be held in English. The place of arbitration shall be Brussels, Belgium.

Article 25 Other legal provisions

Headings or titles of Articles, Clauses, and Provisions are for ease of reference only and shall not modify, define, expand or limit any of the terms or provisions of the present Contract.

The Parties agree that the present Contract is a contract which has been concluded in an international context, that it has been the subject of discussions and clarifications, that all its terms and conditions are fully understood by the Parties, and that the price and the other mutual agreements of the Parties set forth herein were arrived at in consideration of, inter alia, all the provisions hereof specifically including all waivers, releases and renunciations set out herein.

25.1 Entire Agreement

This Contract contains the entire agreement between the Parties and supersedes any previous understandings, commitments or representations whatsoever oral or written, reached or made prior to the conclusion of the present Contract. No provision of this Contract may be changed, waived or discharged, except in accordance with the provisions set out herein.

25.2 Non waiver

The failure of any Party to enforce at any time any of the provisions of this Contract, or to exercise any option herein provided, or to require at any time performance by the other Party of any of the provisions herein, shall in no way be construed to be a present or future waiver of such provision nor in any way affect the validity of the present Contract or any part thereof or the right of the other Party thereafter to enforce each and every such provision. A specific waiver (whether one or more times) by either

Party to any provision, condition or requirement of the present Contract shall not constitute a waiver of any future obligation to comply with such provision condition or requirement.

25.3 Severability

If (a) provision(s) of the present Contract is (are) or become(s) illegal, invalid or unenforceable in any jurisdiction, the Parties agree to give the remaining provisions the maximum practicable enforceability which the applicable law(s) allow(s), unless such remaining provisions would frustrate the original contract.

25.4 Assignment Clause

1. The Contractor acknowledges that:
 - a. the present Framework Contract is procured by ESA in the name and on behalf of the Commission, in the frame of the Delegation Agreement entered into by European Space Agency and the European Commission for the completion of the Galileo System deployment (hereinafter “the Delegation Agreement”)
 - b. the governance of the Galileo Programme, as set out in Commission decision 809 of 14 February 2014 (hereinafter “the Commission Decision”) provides for the handover of the Galileo System from the deployment phase to the exploitation phase as of 01/01/2017;
 - c. the EU Regulation 1285/2013 and the above mentioned Commission Decision set out that the European GNSS Agency shall be entrusted with tasks and responsibilities related to the implementation of the exploitation phase.

- d. for the fulfilment of these tasks the GSA and ESA are negotiating the Galileo Working Arrangement whereby, in the frame of the exploitation phase:
 - i. ESA shall be entitled to make use of the System Support Activities, as defined under section 4 of the Galileo System Support for the exploitation phase Common Framework Statement of Work
 - ii. The GSA shall be entitled to make use of the Service Support Activities, as defined under section 4 of the mentioned Common the Framework Statement of Work
 - iii. a coordinated provision of the System Support Activities and Service Support Activities shall be ensured throughout the duration of the present Framework Contract and the ensuing work orders, as described in the Common Framework Statement of Work

2. In order to cope with the programmatic needs related to the handover of the Galileo System from the deployment to the exploitation phase and with the roles and responsibilities of the GSA and ESA during such phase, the Contractor expresses hereby its prior and irrevocable consent to:
 - i. The assignment of the Contract to ESA, acting in its own name, as far as the System Support Activities under section 4 Galileo FOC System Support for the exploitation phase Common Framework Statement of Work are concerned with corresponding partial termination of the rights and obligations in the Contract related to Service Support Activities under section 4 of the mentioned Common Framework Statement of Work;

- ii. The assignment of the WO1 to ESA, acting in its own name, subject to the conclusion of the Galileo Working Arrangement;
 - iii. The assignment of the Contract to GSA, as far as the Service Support Activities under section 4 of the Common Framework Statement of Work are concerned with corresponding partial termination of the rights and obligations in the Contract related to System Support Activities referred to hereabove;
 - iv. The assignment of the WO2 to GSA, acting in its own name.
3. The Contractor acknowledges and accepts that, after the assignment of the Framework Contract, as set out under article 25.4.2:
- i. The GSA shall be entitled to place Work Orders exclusively for Service Support activities. Under no circumstances:
 - a. the GSA may place work orders for System Support activities;
 - b. The Contractor may have claims towards the GSA as far as System Support activities, rights and obligations are concerned.
 - ii. ESA shall be entitled to place Work Orders exclusively for System Support activities. Under no circumstances:
 - a. The ESA shall be entitled to place work orders for Service Support activities;
 - b. The Contractor may have claims towards ESA as far as Service Support activities, rights and obligations are concerned.
 - iii. Upon request of the GSA, after the assignment of the Framework Contract to GSA, the offer for WO2 formulated in the frame of the tender for the Framework Contract shall be confirmed in writing as

- being fully valid and enforceable towards the requiring party;
- iv. The coordination activities under section 4 of the Galileo System Support for the exploitation phase Common Framework Statement of Work shall be provided in the frame of Work Orders concluded either by the GSA or ESA in a manner to avoid duplication of costs and efforts and with the purpose to achieve at all times the best efficiency and coordination between System Support Activities and Service Support Activities.
4. Following assignment of the Contract, the respective budgetary ceilings are:
- i. For the Framework Contract assigned to ESA (for System Support Activities) = 300 Meuros (in letters three hundred million Euro);
 - ii. For the Framework Contract assigned to GSA (for Service Support Activities) = 75 Meuros (in letters seventy-five million).

The above mentioned apportionment may be modified by mutual agreement between ESA and the GSA. The Contractor acknowledges that, subject to the overall Framework Contract ceiling under article 4 remaining unchanged, any modification of the overall ceiling apportionment shall not amount to an amendment of the Framework Contract or Framework Contracts, after its assignment according to the present article.

5. For clarity, following assignment, the following shall apply:

- i. Agency-specific provisions, as identified in this Contract, shall be read as only applying to the denominated entity (GSA/ESA);
 - ii. Annex 5 of this Contract, only to ESA.
6. The assignment shall be deemed to have taken place and be fully valid and enforceable upon receipt by the Contractor of a written notice of assignment sent by ESA via fax at the address indicated under Article 21.3 (article on communications under the contract). The Contractor undertakes in any case to put in place all the formalities which may be required under the law in order for the assignment to take full effect, according to the provisions of the present clause.

25.5 *Duration*

The present Contract shall come into force upon signature of both Parties' duly authorized representatives (the "Effective Date").

Performance of the Contract may under no circumstances begin before the date on which the Contract enters into force.

The Contract shall run, unless otherwise agreed by the Parties or terminated according to Article 19 up to 31st December 2022. Subject only to the availability of Union funds allocated to the Galileo Programme, to be confirmed with adoption of the next EU Multiannual Financial Framework and of the relevant EU GNSS Regulation, the duration of the Contract shall be automatically extended up to 31st December 2025. Should this condition precedent not be met, the Contract shall be intended as expired on 31st December 2022.

The Contract continues to apply to work orders after its expiry. The activities performed under such work orders shall be closed-out and all deliverables delivered no later than six months after expiry of the relevant work order.

Formal close-out will be certified by a corresponding document (Certificate of Close-Out) signed by the Parties.

For the sake of clarity the Contractor's obligations contained in Article 12 "Intellectual Property Rights" above and the provisions of confidentiality contained in Article 16 "Conflict of Interest", shall survive termination or expiration of this Contract.

Article 26 Limitation of Liability

The total accumulated liability of the Contractor under the Contract and each Work Order, either for breach of contract, including product liability, shall in any case not exceed 130% of the price for the Work order in question ("the Threshold"). This limitation of liability shall not apply in case of gross negligence or wilful misconduct by the Contractor, nor for breach of confidentiality or Third Party IPR.

The Contractor shall be held harmless from any claim related to the above mentioned liabilities whose amount exceeds the Threshold.

Done and signed in two original copies, one for each Party to this Contract, on this day 2016, in Noordwijk (NL)