

DRAFT PARTNERSHIP AGREEMENT

The CHANGING EARTH Science Network

Between:

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

located at: 8-10 rue Mario-Nikis,
75738 PARIS CEDEX 15,
France,

through its establishment ESRIN

located at : Via Galileo Galilei
00044 Frascati (Rome)
Italy

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

of the one part,

and:

.....
(hereinafter called "the Contractor"),

whose Registered Office is at:

.....
.....

represented by:

of the other part,

the following has been agreed:

PREAMBLE

WHEREAS:

- The Agency has an interest in supporting young scientists in ESA Member States to undertake leading edge research activities contributing to the achievement of the Living Planet Program by maximising the use of ESA data and EO assets;
- Equally, the **[University] [Institute]** has an interest in carrying out research work leading to the achievement of the Living Planet Program by maximising the use of ESA data and EO assets;
- The Agency and the **[University] [Institute]** wish to cooperate in regard to the abovementioned activities and to put their respective competence and/or facilities at each other’s disposal for this purpose;
- The **[University] [Institute]** has internally secured partial funding of the abovementioned research work;
- In order to actively support the abovementioned research work, the Agency agrees to co-fund a Post-Doctoral research work regarding <...title.....>, to be carried out by staff of the [University/Institute] in the frame of the present cooperation as specified hereafter.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE, THE PARTIES
AGREE TO THE FOLLOWING:

ARTICLE 1: SUBJECT OF THE AGREEMENT - APPLICABLE DOCUMENTS

- 1.1 In the framework of the cooperation with the Agency covering leading edge research activities contributing to the achievement of the Living Planet Program by maximising the use of ESA data and EO assets, the **[University] [Institute]** undertakes to through post-doctoral research work to be carried out by its staff. The **[University] [Institute]** also undertakes to deliver the documentation (including a Final Report) as described in Article 3 below and to make an oral presentation of the results.

Note: The **[University] [Institute]** commits to provide its key person (please see Article 5 hereto) with a 2 years standard post-doctoral contract to perform the work. Evidence of such contract shall be provided to the Agency’s representatives mentioned in Clause 5 within one (1) month from the date of contract signature by both parties. The Agency reserves the right to terminate the present Agreement should this evidence not be provided by that time. In that case sub-Clause 33.4 shall however not apply.

- 1.2 **[Option]:** Furthermore, the **[University] [Institute]** undertakes to deliver all results achieved in the frame of the post doctoral research work and to make those publicly available through the Support to Science Element (STSE) Programme website.
2. For the purpose of this Partnership Agreement, the **[University] [Institute]**'s staff shall be defined as to include the Post-Doctoral scholar.
3. The abovementioned work shall be performed in accordance with the specific articles of this partnership agreement and with the following documents, which constitute an integral part hereof and are listed in order of precedence in case of conflict:
 - The present partnership Agreement (hereafter referred to as “the Agreement”), its Appendix II (Contract Change Procedure) and its Appendix III (Licence Agreement) on the same level;
 - The General Clauses and Conditions for ESA contracts, ref. ESA/C/290, rev. 6 (not attached hereto but known to both parties), as amended by Article 4 hereunder;
 - The Agency’s Call for Proposals document ref. STSE-TEBM-EOPG-TN-08-0005, “The Changing Earth Science Network-Call for Proposals 2008”, attached hereto as Appendix I;
 - The **[University] [Institute]**'s proposal ref. dated as modified by (**the Proposal**), all not attached hereto but known to both parties.
 - The Specification for the production of ESA Study Contract Reports not attached hereto but known to both parties, and the form attached hereto as Appendix IV;

ARTICLE 2: DURATION AND PRICE

1 Duration

The duration of the Agreement is [months], starting from []. The Agreement may, however, be extended, on the written agreement of both parties, if such an extension is necessary in order to enable the activities envisaged under the Agreement to be completed.

2 Price

- 2.1 The total amount allocated by the Agency for the post-doctoral research work mentioned in Article 1 here above is:

EURO.....

(.....EURO),

Broken down as follows:

Period 1 (from to): EURO

Period 2: (from to): EURO

- 2.2 The abovementioned amount is understood to partially cover the total cost of the post-doctoral research work, amounting to a total cost of EURO The **[University] [Institute]** hereby represents that the remainder, amounting to EURO, shall be internally covered and that the post doctoral scholar shall be provided with adequate office space and equipment for the complete duration of his/her research work as specified under Article 2 point 1 here above.
3. For the purpose of Clause 17.1 of the General Conditions (Article 4), the amount mentioned in paragraph 1.1 above is stated to be a firm fixed price as defined in Clause 2.1 of Annex 1 to the General Conditions.
- 4. This amount does not include any taxes and duties in the Member States of the Agency.**
(OR ALTERNATIVELY FOR GERMANY)
4. This amount does not include any taxes and duties in the Member States of the Agency other than Gewerbeertragsteuer – when allowable, as far as German companies are involved and concerned.
5. This amount shall be for all work and deliverables supplied Duty Paid, exclusive of import duties and VAT, in accordance with INCOTERMS 2000 to the address specified in Article 4, Clause 7 of the Agreement.
(OR ALTERNATIVELY FOR ITALY)
5. This amount shall be for all work and deliverables supplied Duty Paid, exclusive of import duties and VAT, in accordance with INCOTERMS 2000 to the addresses specified in Article 4, Clause 7 of the Contract. With regard to the application of the Italian VAT (IVA – Imposta sul Valore Aggiunto) it is specified that the supplies made to the Agency are not subject to this tax in accordance with Italian Law No. 358 dated June 9, 1977 (Gazzetta Ufficiale No. 184 dated July 7, 1977).
6. **[Option]:** The travel cost (air travel in economy class and one night stay in Hotel selected by the Agency) of the Post-doctoral research scholar carrying out a research stage at ESRIN premises shall be covered by the Agency. The University/Institute hereto agree that it shall be directly responsible, vis-à-vis their post doctoral scholar, of any other cost incurred in relation to their own staff being based at the Agency’s premises;

The research stage at ESRIN shall have a total duration of months, starting on day/month/year.

ARTICLE 3: PLACE AND DATES OF DELIVERY AND MEETINGS

1. PLACE AND DATES OF DELIVERY

1.1 The [University] [Institute] shall, within the frame of the Agreement, deliver all documentation and reports in the required number of copies. They shall be sent to the Agency's nominated Technical Supervisor mentioned in Clause 5 of Article 4, unless otherwise specified, in accordance with the following specific provisions:

- The draft versions of the Final Report shall be submitted in 3 hard copies each for approval of the Agency's Technical Supervisor not later than
- The finalised versions of the document mentioned here above shall be issued at the latest 4 weeks after the Agency's approval of the draft versions in .. hard copies and in an electronic file.

[OPTION]

1.2 The [University] [Institute] shall furthermore deliver the following:

- the software/algorithms developed in the framework of the Agreement not later than to the Agency's Technical Officer.

2. MEETINGS AND REPORTING

Any meetings and/or reviews required in the framework of the Agreement shall be agreed between the Parties. The [University] [Institute] shall deliver monthly reports and a mid-term Report at the end of the first research year.

The final presentation shall be held at the end of the work. Periodic reporting to the Agency shall be carried out as specified in Appendix I Section 2.4.

ARTICLE 4: GENERAL CONDITIONS

The "General Clauses and Conditions for ESA Contracts" (ESA/C/290, rev. 6), hereinafter referred to, as "General Conditions" shall apply to the Agreement with the following amendments or replacements. The specific conditions in the Agreement shall prevail over the "General Conditions".

GENERAL

The "[University] [Institute]" shall replace the "Contractor" throughout the Agreement.

PART I OF THE GENERAL CONDITIONS

CLAUSE 2: APPROVAL

For the purpose of the Agreement the authorised representative of the Director General is:

Mr. Stephen Briggs,
Head of the EO Science, Applications & Future Technologies Department

CLAUSE 5: AGENCY'S REPRESENTATIVES - INSPECTIONS

For the purpose of the Agreement the Agency's representatives are:

Mr..... (.....), Technical Supervisor, or a person duly authorised by him, for technical matters;

Miss Alex Madden (RES-POE), for contractual and administrative matters;

(hereafter "**the Agency's Representatives**")

CLAUSE 7: COMMUNICATIONS

1. All correspondence for the Agency for contractual and administrative matters (with the exception of invoices as mentioned in Clause 22) shall be addressed to:

ESRIN
Via Galileo Galilei
I - 00044 Frascati
Italy

to the attention of:

Miss A Madden (RES-POE)
Phone no.: +39 06 941 80 453
Fax no.: +39 06 941 80 384
E-mail: Alex.madden@esa.int

with a copy to the Agency's Technical Supervisor.

2. All correspondence for the **[University] [Institute]** for contractual and administrative matters shall be addressed to:

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

Phone no.:
Fax no.:
E-mail:

to the attention of:

Mr.

Phone no.:

Fax no.:
E-mail:

with a copy to

CLAUSE 10: EQUIPMENT, SUPPLIES AND TECHNICAL DOCUMENTS MADE AVAILABLE BY THE AGENCY TO THE [UNIVERSITY/INSTITUTE]

[OPTION 1]

It is not foreseen that the Agency will make available to the [University] [Institute] any equipment, supplies or technical documents.

[OPTION 2]

Clause 10 shall apply to made available by the Agency to the [University] [Institute].

For the purposes of Clause 10.2 the items' value is

CLAUSE 11: COMPENSATION FOR DAMAGE CAUSED TO PERSONS, GOODS OR PROPERTY

The liability of either party in respect to damage to goods or property belonging to the other party or to injury to personnel shall not exceed an amount of EURO per event and a total amount of EURO per calendar year. **[amounts TBD depending on limit(s) defined in the [University's/Institute's] insurance policy. See also Article 6.13]**

CLAUSE 12: APPLICABLE LAW

The laws ofshall govern the Agreement.

CLAUSE 13: ARBITRATION

The arbitration proceedings shall take place in

[FOR SWITZERLAND]

The arbitration proceedings referred to in Clause 13 shall take place in

Notwithstanding the provisions of Clause 13.5, the procedure for the enforcement of the award shall be that of the civil procedure law of the canton in which the arbitration proceedings take place.

[FOR ITALY]

Notwithstanding Clause 13 the following is agreed:

Each and every dispute arising out of or relating to the interpretation or execution of this partnership agreement shall be submitted to arbitration.

The arbitration proceedings shall take place in

The arbitration tribunal shall consist of three persons, one to be appointed by the [University/Institute], one by the Agency and the third, who shall be chairman, by the two

arbitrators so appointed. Should these two arbitrators not be able to agree on the nomination of the third, the president of the Court ofshall appoint him/her.

The arbitrators shall decide according to law, and awards by this arbitration tribunal shall be binding on the parties.

The Italian civil procedure law shall govern the proceedings and the enforcement of the award.

[FOR SPAIN]

The arbitration proceedings referred to in Clause 13.1 shall take place in

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

The arbitrators shall decide according to law.

The arbitration award shall be binding on both parties. The Spanish civil procedure law shall govern the enforcement of the award.

CLAUSE 15: INFRINGEMENTS OF THIRD PARTY RIGHTS

The following is added:

The **[University] [Institute]** specifically represents and guarantees that the Post-Doctoral scholar has unrestricted entitlement to granting the rights required by the Agency under Part II of the General Conditions (see below) regardless of any other legal agreement that the **[University] [Institute]** or **the Post-Doctoral scholar** may have concluded with any third party relating to the research work covered by the Agreement.

CLAUSE 17: PRICING

Sub-clauses 17.3 and 17.4 do not apply.

CLAUSE 19: PACKING AND TRANSPORT EXPENSES

The following provision is added to Clause 19:

All packages shall be correctly and separately addressed as required by Article 4. They shall include the description of the contents, and all shipping documents shall clearly refer to the Agreement (Agreement number and description of contents).

CLAUSES 20 AND 21: ADVANCES, PROGRESS AND FINAL PAYMENTS

Clauses 20 and 21 shall be implemented as follows:

1. All payments shall be made according to the provisions hereunder:
 - 1.1 Payments shall be made within 30 calendar days of receipt of the documents listed below:
 - 1.2 ADVANCE PAYMENTS:
 - Invoice(s), to be submitted after signature of the Agreement by both parties;
 - 1.3 PROGRESS PAYMENTS
 - Invoice(s);
 - Certification by the Agency that the stage foreseen has been satisfactorily completed.
 - 1.4 FINAL SETTLEMENT
 - Invoice(s);
 - Provision of a certification, issued by the Agency, of satisfactory delivery of all deliverable items, of services to be rendered and other obligations to be fulfilled, in accordance with the stipulations of the Agreement, in particular with the provisions of Article 3 (Duration – Place and Dates of Delivery – Meetings) and Article 4, Clause 29 (Acceptance and Rejection);
 - Copies of supporting documents that may be required by the Agency as evidence of satisfactory contractual performance;
 - Statement of Inventions and List of Inventory according to the model specified in Appendix III hereto, submitted by the prime Contractor on behalf of the consortium (if any).

The Agency reserves the right to visit the [University] [Institute] premises and ascertain the progress of the work under the Contract prior to making the progress payment concerned.

2. Milestone payment plan: The Agency shall make the following payments:

Milestone Description	Schedule Date	Companies	Amount in EURO
Advance payment: upon signature of the Agreement by both parties (max. 20% of total amount allocated by the Agency).
Progress payment(s): upon tbd milestone(s)

Final Settlement: upon delivery and acceptance of all Agreement deliverables (min. 20% of total amount allocated by the Agency).
Total:	

3. The term “invention” in Clause 21.1 of the General Conditions shall be construed as making reference to the concept of “Registered Intellectual Property Rights” as defined in Clause 36.2 of the General Conditions.

CLAUSE 22: INVOICES, PLACE AND CURRENCY OF PAYMENT

Clause 22 shall be implemented as follows:

1. The **[University] [Institute]** is required to submit invoices for all payments due under the Agreement.
- 2.1 The **[University] [Institute]** shall ensure that all invoices, are submitted for payment exclusively through the Agency’s EFIS system. If the **[University] [Institute]** has no access to the Agency’s EFIS system at the time of signature of the Agreement, he shall immediately request an EFIS user account from the ESA Helpdesk (idhelp@esa.int, specifying a name, the company name and the ESA obligation number of the Agreement).
- 2.2 However, should the Agency’s EFIS System be technically not operational with the Contractor at the moment of submission of the invoices, he may submit invoices in paper format in 5 copies to ESA – ESRIN Finance Payment together with justifying documentation as required by the Agreement.
- 2.3 The **[University] [Institute]** undertakes to submit complete invoices and to strictly adhere to the instructions (including instructions for billing taxes and duties, where applicable) contained in the standard package.

[OPTION 1: (VAT Exemption certificate issued)]

Invoices submitted by the **[University] [Institute]**, which are free of VAT reference shall be made to the serial number indicated in the VAT Exemption Form which the Agency has provided to the **[University] [Institute]** when forwarding to him the two originals of the Agreement. On invoices submitted by EFIS the number shall be put in the free text field.

[OPTION 2: (Exemption under national law)]

Invoices submitted by the **[University] [Institute]**, which are free of VAT due to the applicable national law, shall make reference to the relevant piece of national legislation as shown below:

– for Italy: “Law Nr. 358 of 9/6/1977 – Gazzetta Ufficiale Numero 184 of 7/7/1977

3. Payments shall be made by the Agency in EURO to the account specified by the **[University] [Institute]**. Such information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). Payments shall be considered as effected on time if the Agency's orders of payment reach its bank within the payment period stipulated in Clauses 20 and 21, paragraph 1.1 above.
4. Clause 22.2 second sentence is deleted.
5. Any special charges related to the execution of payments will be borne by the **[University] [Institute]**.
6. Any questions concerning the operation of EFIS shall be addressed to the ESA Helpdesk (idthelp@esa.int).

CLAUSE 25: SUB-CONTRACTS

No sub-contracts are foreseen.

CLAUSE 26: CHANGES/MODIFICATIONS TO PROJECTS, ENGINEERING AND SPECIFICATIONS

Clause 26 shall not apply.

CLAUSE 28: PENALTIES FOR LATE DELIVERY

Clause 28 of the General Conditions shall not apply.

CLAUSE 29: ACCEPTANCE AND REJECTION

Clause 29 is implemented as follows:

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

PART II OF THE GENERAL CONDITIONS

[**OPTION 1:** The University/Institute is the owner of IPR generated by the Post-Doctoral scholar in the frame of the Agreement]

Part II (Option B) shall apply with the following additions and/or modifications:

CLAUSE 46 – FEES

Clause 46 is not applicable.

[**OPTION 2:** The Post-Doctoral scholar is the owner of IPR generated in the frame of the Agreement]

Prior to the completion of the work relative to the **Post-Doctoral scholarship** performed under the Agreement, the [**University**] [**Institute**] undertakes to arrange that the **Post-Doctoral scholar** grants the Agency a licence on the intellectual property [**he**] [**she**] has generated in the frame of the Agreement, giving the Agency rights equivalent to those foreseen under Part II (Option B) of the General Clauses and Conditions for ESA Contracts, Revision 6.

The licence shall be granted by means of the standard agreement attached hereto as Appendix III.

ARTICLE 5: KEY PERSONNEL

1. The work shall be executed by the Post-Doctoral scholar nominated by the [University] [Institute], namely Ms./Mr. (Key Personnel).
2. Any replacement or part-time assignment to other tasks of such Key Personnel, to the extent that they are not available as foreseen in the Proposal, requires the prior written approval of the Agency's Representatives. Appropriate requests shall be accompanied by a justification for the proposed change and by a comprehensive CV of the new key personnel proposed. Except for exceptional cases, the replacement shall only be permitted if justified by reasons outside the Contractor's control.
3. The Agency may for justified reasons ask for a replacement of Key Personnel. Such request, signed by the Agency's Representatives, shall be presented in writing to the Contractor who shall then, within one month, propose suitably qualified replacement staff.

ARTICLE 6: UNDERTAKINGS OF THE [UNIVERSITY/INSTITUTE]

The following provisions shall apply in the case of [**University**] [**Institute**]'s staff located at ESRIN:

- 6.1 The **[University] [Institute]** shall be responsible for the orderly execution of the Agreement.
- 6.2 The **[University] [Institute]** has nominated the following representative, who is a *[role of the representative within the University/Institute]* at the **[University] [Institute]**, to serve as the principal interface between the Agency and the post-doctoral Scholar:
- [name of representative]*
- 6.3 Following consultation with the Agency the **[University] [Institute]** shall be responsible for the management and scheduling of its personnel's leave, travel arrangements, etc. The **[University] [Institute]** shall also manage and keep a proper record of its personnel with regards to sick leave, travels, etc.
- 6.4 The **[University] [Institute]** shall be responsible for organising periodic reviews to discuss with the Agency's Representatives all matters related to the execution of the Agreement. The **[University] [Institute]** shall also arrange ad-hoc meetings, if so required. Minutes of all meetings shall be provided by the **[University] [Institute]** in the number of copies requested by the Agency.
- 6.5 The **[University] [Institute]**'s staff shall not have the authority to sign documents on behalf of the Agency except when explicitly authorised in writing by the Agency.
- 6.6 The Agency shall provide direction to the **[University] [Institute]**'s staff in respect of matters under the Agreement.
- 6.7 The Agreement shall not affect the legal relationship between the **[University] [Institute]** and its staff. The Agency's relationship with the **[University] [Institute]**'s staff shall be material only, there being no contractual relationship between the two.

Comment [am1]: I have added this in because the SoW described such a role

6.8 LEGAL COMPLIANCE

The **[University] [Institute]** undertakes to comply with all relevant laws, decrees, rules and regulations related to its staff working on the Agency's premises under the Agreement (such as, but not limited to: safety, insurance and health). In cases where the said laws, decrees, rules and regulations imply an obligation to be fulfilled directly by the **[University] [Institute]**'s staff (such as, but not limited to, medical insurance, etc.), the **[University] [Institute]** undertakes to enforce such laws, decrees, rules and regulations towards its staff.

6.8 HEALTH & SAFETY COMPLIANCE

- 6.8.1 The Agency shall perform the co-ordination and control of the application of any safety and health measure and/or regulation.

- 6.8.2 The **[University] [Institute]** certifies that its staff working on the Agency’s premises have read the General Safety and Security Rules applicable on the ESA/ESRIN Premises and that its staff shall comply with these rules.
- 6.8.3 The **[University] [Institute]**’s staff shall observe all applicable safety and health regulations in force in Italy. In the event of serious infringements of the regulations, the Agency may prohibit the entry onto its site of the person concerned. The consequences of such prohibition shall be borne by the **[University] [Institute]**.
- 6.9 WORKING HOURS
- 6.9.1 Work of the post-doctoral scholar shall be performed at the [University] [Institute] during standard working hours.

[OPTION]

In the case of staff located at ESRIN Premises: The work under the Agreement shall be performed – for the duration of the training period of the post-doctoral Scholar- at ESRIN during normal working hours and days. A listing of the relevant official ESA holidays shall be provided to the **[University] [Institute]** at the beginning of the training period.

- 6.10 **[OPTION in case of training period of the Post-doctoral Scholar onsite at ESRIN]: ON-SITE COMPLIANCE.**
- 6.10.1 All **[University] [Institute]**’s staff shall be required to complete the compulsory introductory course regarding on-site safety, prior to the issue of an Agency identity card.
- 6.10.2 The Agency identity card shall be carried, at all times, by the **[University] [Institute]**’s staff concerned.
- 6.10.3 Identity cards must be immediately returned to the Agency upon termination of the Agreement. All visitors of the **[University] [Institute]**’s staff on the Agency’s premises, including **[University] [Institute]**’s staff not covered by the Agreement, shall complete the formal visitors’ procedure at the site. Visitors are not permitted to visit areas, other than the Restaurant/Conference facilities, without the prior authorisation of the Agency’s Technical Supervisor concerned.
- 6.11 INTERNET POLICY COMPLIANCE
- 6.11.1 The **[University] [Institute]**’s staff shall observe the following stipulations concerning the ESA Internet Access Policy:

The **[University] [Institute]** shall ensure that its staff comply with the Agency’s Internet access services and any restrictions and requirements designed to protect the Agency’s information, its computing resources and reputation.

On-site **[University]** **[Institute]**'s staff using ESA Internet access service shall in particular:

- Ensure that their use of the service is wholly consistent with the purpose of the Agreement.
- Ensure that their use of the service does not bring the Agency into disrepute.
- Comply with the Agency's Information Security rules and procedures (for example, by scanning all files copied from the Internet for viruses using the tools provided by the Agency for this purpose).
- Notify immediately the Agency's Information Security Officer, at the appropriate site, of any actual or suspected security threat to the Agency's automation resources.

Unless it is part of their work under the Agreement, on-site **[University]** **[Institute]**'s staff using ESA Internet access service shall not:

- Attempt to bypass any of the Agency's security mechanisms either from within or outside the Agency's premises.
- Violate any national law by using the service. These laws generally prohibit the unauthorized alteration, modification, damage, destruction, or access to software or information, and also theft of services, fraud and embezzlement by using automated systems.
- Make copies of copyrighted material, store such copies on Agency systems, place copies on the Internet or transmit them over the Agency's networks.
- Use the service for financial gain or private purposes (for example, conduct private business).
- Use the service to conduct company business other than that covered by the Partnership agreement.
- Use the service to intentionally copy computer programs from the Internet.
- Use the service in any way that would expose the Agency to claims of civil liability, for instance, by:
 - transmitting defamatory (libellous or scandalous) statements;
 - transmitting, receiving or copying obscene material;
 - using offensive language, etc.

6.11.2 The Agency's System Administrator may access and view an electronic mail, if this is necessary when investigating or correcting an operational problem. Consequently the Agency shall not guarantee the privacy or confidentiality of the correspondence and use of the Internet access service by the **[University]** **[Institute]**'s staff. Verification of same may be made each year by the Agency by carrying out a random check in order to verify the correct use of access to the Internet.

- 6.12 The **[University] [Institute]** undertakes to take appropriate insurance coverage for itself and specifically for any of its staff working on-site at ESRIN in regard to their liability hereunder. Any such insurance shall include a provision of non-recourse against the Agency or its agents, with the exception of wilful act or omission. The **[University] [Institute]** shall indemnify the Agency against failure to include such a provision.
- 6.13 Should the work of the **Post-Doctoral scholar** be cancelled upon the **[University] [Institute]**'s or **[University] [Institute]**'s staff request, the **[University] [Institute]** shall give the Agency a prior notice of three months. During the notice period work shall continue normally. At the end of the notice period the **[University] [Institute]**'s staff shall produce and deliver to the Agency a report summarising all work done up to that point.

ARTICLE 7: RIGHTS AND UNDERTAKINGS OF THE AGENCY

- 7.1 In case of cancellation of the Agreement as per Article 6.13 above, any payments made by the Agency to the **[University] [Institute]**, covering working periods not fully completed by the **[University] [Institute]**'s staff, shall be reimbursed to the Agency pro-rata.
- 7.2 The Agency shall provide the following to the **[University] [Institute]**'s staff, upon confirmation that their presence at ESRIN has been authorised:
- Access to the ESRIN site;
 - Office accommodation and office facilities;
 - Access to the usual office software, such as but not limited to MS Office;
 - Use of facilities on-site, such as restaurant, recreational facilities, travel agency and bank;
 - Proper registration of the **[University] [Institute]**'s staff on the ESRIN site.

ARTICLE 8: SPECIAL CONDITIONS FOR ITALIAN Universities/Institutes

By signing this Appendix the **[University] [Institute]** certifies that it specifically approves the following Clauses of the General Clauses and Conditions for ESA Contracts:

- | | |
|-------------|---|
| Clause 11.2 | Compensation for damage caused to persons, good or property |
| Clause 13 | Arbitration |
| Clause 14 | Infringements of the law |
| Clause 15 | Infringements of third party rights |
| Clause 24 | Transfer of Contract |
| Clause 25 | Sub-contracts |

- Clause 31 Cancellation - General Rule
- Clause 33 Cancellation with fault of the **[University]** **[Institute]**
- Clause 34 Cancellation in special cases
- Clause 35 Provisions to be observed in sub-contracts as to cancellation

Signed on behalf of the **[University]** **[Institute]**:

.....
Mr/Ms.

On this day:

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

On behalf of the Agency in Noordwijk, on this day,

Mr. Stephen Briggs,
Head of the EO Science,
Applications & Future
Technologies Department

On behalf of the **[University]** **[Institute]** in, on this day,

.....

Appendix I:
The Changing Earth Science Network - CALL FOR PROPOSALS
Ref. STSE-TEBM-EOPG-TN-08-0005

Appendix II: Contract Change Procedure

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

1. INTRODUCTION OF A CHANGE

For all changes, whether requested by the Agency or initiated by the Contractor, the Contractor shall submit a Proposal for a Contract Change Notice (CCN). The Proposal shall be signed by the Contractor's authorised representative(s) and submitted to the Agency's Contracts Officer.

The Contractor shall ensure that each Change Proposal is fully co-ordinated and that all reasonably foreseeable implications of the change have been considered. On request of the Agency, the Contractor shall provide additional documentary evidence.

The proposal for a CCN shall include the following:

- a) a description of the Work Package affected in the form of a brief statement of work;
- b) an analysis of the impact on the existing contract provisions together with suggested revisions as appropriate;
- c) a detailed summary of effects, if any, of the proposed change on the contract price and/or limit of liability.

2. APPROVAL OR REJECTION OF THE CONTRACT CHANGE NOTICES

Upon receipt of a Change Proposal signed by the Contractor, the Agency shall consider it as regards its acceptability within ten (10) day as from receipt of the Change Proposal. Should the Change Proposal be approved, the actual CCN will be issued and sent to the Contractor already signed by the Agency's Contracts Officer. The Contractor shall have it signed by his Contracts Officer and return one copy to the Agency. Should a Change Proposal be rejected for any reason, the Contractor shall be informed accordingly, together with the reasons for the rejection. At the request of either party, the change may be discussed at a Change Review Board, consisting of a Contracts Officer and a Technical Officer of each party.

3. IMPLEMENTATION AND STATUS OF APPROVED CHANGE NOTICES

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

If the Agency considers it necessary, approved CCNs may subsequently be integrated into a Rider to the Contract

Appendix III: Standard Licence Agreement for Objective Changing Earth

**AGENCY'S OWN REQUIREMENTS
ESA STANDARD LICENCE 4**

[Contractor]

and

[European Space Agency]

ESA Intellectual Property Licence
for the
Agency's Own Requirements

ESA Partly Funded Contract No. []

[TITLE – based on Contract Works licensed]

THIS AGREEMENT is made on 200[]

BETWEEN:

- (1) [Contractor – registered corporate number, registered address] (the “Licensor”),
and
(2) [The European Space Agency, established by the Convention of the European Space Agency, whose headquarters are located at 8-10 rue Mario Nikis, 75738 Paris, Cedex 15 – France] (the “Licensee”)

WHEREAS:

- (A) The Licensor has entered into an agreement with the Licensee to provide certain works – the agreement is referred to with ESA serial number [number] (the “Contract”).
(B) The Licensor is the owner of intellectual property rights which arise from work performed under the Contract (the “Contract Works” - further defined below) and the Licensor has agreed under the Contract to license those rights to the Licensee for the Agency’s Own Requirements.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions

- 1.1 **“Agency’s Own Requirements”** means the activities and programmes undertaken by the European Space Agency in the field of space research and technology in accordance with Article VI (a) and (b) of the Convention of the European Space Agency as specifically defined in Schedule 1¹;
“Background Intellectual Property Rights” means all Intellectual Property Rights not developed under a contract with the European Space Agency either prior to or during execution of the Contract which are used by the Contractor and/or the European Space Agency to complete the Contract or required for use of any product, application or result of the Contract;
“Contract Works” means work arising from performance of the Contract including information, know-how, data, blue prints, plans, diagrams, models, specifications, goods, products or any computer software arising from performance of the Contract as specifically defined in Schedule 1²;

¹ The Contractor may want to restrict the licence to specific Agency programmes, so it is aware of who is using the technology and what it is being used for – if this is the case, the specific programmes can be defined in Schedule 1.

² It is in the Contractor’s and the Agency’s interest to define the rights licensed and therefore a description of the “relevant” Contract Works should be given. Note, only the “relevant” Contract Works need to be

“Favourable Conditions” means conditions a seller to sell on and a purchaser is willing to accept which are more favourable to the purchaser than Market Conditions (and which normally allow reasonable profit for the seller);

“Intellectual Property Rights” means all Registered Intellectual Property Rights and all unregistered intellectual property rights granted by law without the need for registration with an authority of office including all rights in information, data, blue prints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trade marks, design rights, data base rights, topography rights, know how and trade secrets or equivalent rights or rights of action anywhere in the world;

“Legitimate Commercial Interest” means an interest the Contractor can demonstrate which is important to its ability to commercially exploit Intellectual Property Rights arising from work performed under the Contract for a defined period of time which includes but is not limited to an economic position vis-à-vis a competitor, loss of profits or survival of an undertaking;

“Market Conditions” means conditions the seller is willing to sell on and a purchaser is willing to accept without restrictions or influence by the European Space Agency;

“Registered Intellectual Property Rights” means those registrations and applications listed in Schedule 1 together with any existing or future registrations or applications substantially based on those listed in Schedule 1 and any equivalent rights and rights of action anywhere in the world;

“Territory” means all countries in the world.

- 1.2 In the event of any conflict between this agreement and the Contract the terms and conditions of the Contract shall prevail.
- 1.3 If an issue arises over the interpretation of Market Conditions, Favourable Conditions and/or Legitimate Commercial Interest, any party requiring access and use of Intellectual Property Rights arising from work performed under the Contract may request a reasoned, binding opinion from a forum agreed by the parties (and if the parties cannot agree a forum the matter shall be referred to the European Space Agency).

2. Licence

- 2.1 In consideration for the Licensee entering into the Contract the Licensor agrees to these terms and conditions and grants the Licensee a non-exclusive royalty free licence to use all Intellectual Property Rights the Licensor owns subsisting in and protecting the Contract Works in the Territory for the Agency’s Own Requirements.
- 2.2 The term “use” for the purposes of software include use to operate, integrate, validate, maintain and modify software.
- 2.3 The Licensee shall only sublicense the Intellectual Property Rights licensed under this agreement for the Agency’s Own Requirements on terms to be agreed with the Licensor after notifying the Licensor in writing.³

described – this may not be all the Contract Works provided under the Contract. Also note, the relevant Contract Works may include written materials as well as software and products and so there will be a variety of intellectual property rights subsisting in and protecting those works.

³ Note, any sublicense will be to a third party and so needs to be on more comprehensive terms and conditions.

- 2.4 At the request of the Licensee, the Licensor shall carry out any reasonable task and execute any further documentation reasonably required to register or protect this licence of Intellectual Property Rights in the Contract Works.⁴
- 2.5 For the avoidance of doubt, any Intellectual Property Rights in the Contract Works owned by the Licensor shall remain the property of the Licensor and no representation or act by the Licensee (or any sublicensee) shall indicate or be construed to provide any other right, title, licence or interest in the Contract Works.

3. Notices

- 3.1 Notification under this agreement should be sent to:

Name	_____	_____
Address	_____	_____
Telephone	_____	_____
Fax	_____	_____
e-mail	_____	_____

For the Licensor

For the Licensee

- 3.2 Notification sent under this agreement shall be deemed valid and effective when received by mail, fax or e-mail providing there is written confirmation of receipt.

4. [Software]⁵

- 4.1 The Licensor shall deposit the Source Code for software developed under the Contract which forms part of the Contract Works with a Source Code Agent to be made available (together with documentation required to operate the Source Code) to the Licensee for the Agency's Own Requirements when:

- (a) the Licensor becomes insolvent, ceases to carry out its business, has a receiver, liquidator, administrative receiver, administrator, trustee or other similar officer appointed over the whole or part of its assets or an order is made or a resolution passed for the winding up of the Licensor (save for a solvent winding up as part of a bona fide reconstruction or amalgamation); or

⁴ In some countries the Licensee may wish to protect the licence of registered intellectual property by registering the licence with the local Patent Office. The licence is then on the public record. Rather than present the whole of this agreement (which is a licence to use ALL intellectual property rights protecting the Contract Works) it is better to register a short form Confirmation Licence.

⁵ This clause is only appropriate if the Contract Works include software created by the Contractor for the Agency. It reflects the obligation in the prime contract to deposit Source Code with a Source Code Agent.

- (b) the Licensor commits a breach of the Contract which is material and not capable of remedy or which is capable of remedy but which is not remedied within 60 days of notice to the Licensee.
- (c) the Licensor assigns Intellectual Property Rights protecting the Source Code.

4.2 The Licensor shall release, under confidentiality terms to be agreed, the Source Code for software developed under the Contract which forms part of the Contract Works to the Licensee (or require the Source Code Agent to release such Source Code to the Licensee) in the event it is required upon request for use for the Agency's Own Requirements:

- (a) to operate, integrate or validate software developed under the Contract with other Licensee systems;
- (b) for maintenance or modification of software developed under the Contract;
- (c) to operate, integrate, validate, maintain or modify updates, modifications or enhancements to software developed under the Contract.

5. [Background Intellectual Property Rights]⁶

If the Licensee requires Background Intellectual Property Rights owned by the Licensor for the Agency project specified in the Contract, the Licensor hereby grants the Licensee an irrevocable, free, world wide licence to enable the Licensee to use and modify any product, application or result of the Contract for that project on Favourable Conditions.

If the Licensee requires Background Intellectual Property Rights owned by the Licensor to use and modify any product, application or result of the Contract for the Agency's Own Requirements other than for the projects specified in the Contract the Licensor shall grant a licence to that party on Market Conditions unless contrary to the Contractor's Legitimate Commercial Interests.

6. Miscellaneous

6.1 To the extent allowed by law the Licensor makes no representation and gives no warranty concerning the accuracy, format (either in hard copy or electronic form) suitability or fitness for purpose of information or documentation relating to the Contract Works supplied under this agreement. The Licensor shall not be liable in any form for any loss, damage or expenses incurred by the Licensee which results either directly or indirectly from the Licensee accessing, using, disclosing or copying information or documentation relating to the Contract Works unless such loss, damage or expense cannot be excluded by agreement under the governing law of this agreement.⁷

⁶ This clause is only appropriate if there is Background IPR in the Contract Works.

⁷ In some countries certain liabilities cannot be excluded by contract. If under the law governing the agreement all liabilities can be excluded, then all liabilities should be excluded providing it does not conflict with the Contract.

6.2 This agreement is for the benefit of the Licensee but no right, title, licence or interest obtained by virtue of this agreement may be assigned or transferred by the Licensee without prior written consent from the Licensor.

6.3 No amendment made to this agreement shall be binding or effective unless made in writing and signed by both the Licensor and the Licensee.

7. Disputes/Governing law

7.1 The validity, construction and performance of this agreement shall be governed by the laws of [country of the Licensor].

7.2 All disputes arising out of or in connection with this agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

IN WITNESS whereof this agreement has been executed on the date first above written

Signed by []
for and on behalf of
[.....- full name]

Signed by []
for and on behalf of
[The European Space Agency]

Date: _____

Date: _____

Schedule 1

Agency's Own Requirements

[describe particular requirements, activities or programmes undertaken by the European Space Agency which the Contract Works are licensed for]

Relevant Contract Works

[describe or provide a specification of the relevant works to be licensed – this may include documentation, plans, drawings, products or software]

Registered Intellectual Property Rights

Patents (and applications)

Title	Registered owner	Application/ granted	Country	Date of registration/ application

Appendix IV: ESA Study Contract Report

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

* Sections to be completed by ESA

** Information to be provided by ESA Study Manager