

# CNES SPECIAL ADMINISTRATIVE TERMS AND CONDITIONS



Toulouse, 1<sup>st</sup> October 2021

DAJ/D-2021 - 13258

## **PREAMBLE**

The CNES Special Administrative Terms and Conditions (CCAP) are applicable to CNES contracts and CNES framework agreements as well as to the agreements that refer to them. They also apply to all acts resulting from the execution of a Contract, for example, to letters serving as a routine order, to purchase orders, subsequent contracts, etc.

All the clauses set out in the CCAP apply to the Contract, apart from any clause(s) expressly specified in the Contract, on an exceptional basis, as being excluded therefrom.

The clauses set out in the CCAP complete, specify or possibly waive the corresponding provisions in the General Administrative Terms and Conditions for Government contracts (CCAG) provided for in the “Contractual Documents” Article of the Contract, and shall take precedence over said provisions.

The reference CCAGs are:

- Government contracts for ordinary supplies and services (CCAG-FCS) (Order of 30 March 2021),
- Government contracts for information and communication techniques (CCAG-TIC) (Order of 30 March 2021),
- Government contracts for intellectual services (CCAG-PI) (Order of 30 March 2021),
- Government industrial contracts (CCAG-MI) (Order of 30 March 2021),
- Government works contracts (CCAG-Works) (Order of 30 March 2021),
- Government project management contracts (CCAG-MOE) (Order of 30 March 2021),

The Contract may also complete, specify or waive the clauses set out in the CCAP.

## **TABLE OF CONTENTS**

<b>CHAPTER I – GENERAL .....</b>	<b>5</b>
ARTICLE 1. GENERAL OBLIGATIONS OF THE PARTIES .....	5
ARTICLE 2. CONTRACTUAL DOCUMENTS .....	6
ARTICLE 3. CONFIDENTIALITY – PERSONAL DATA PROTECTION - SECURITY MEASURES .....	6
ARTICLE 4. WORKER PROTECTION AND WORKING CONDITIONS .....	11
ARTICLE 5. PROTECTION OF THE ENVIRONMENT, HEALTH AND SAFETY .....	12
ARTICLE 6. TRANSPARENCY, FIGHT AGAINST CORRUPTION, MODERNISATION OF THE ECONOMY AND PATENT INFRINGEMENT .....	13
ARTICLE 7. INFORMATION CONCERNING SUPPLIERS OF THE CONTRACTOR.....	15
ARTICLE 8. ASSESSMENT OF PRODUCTION COSTS .....	16
ARTICLE 9. GOVERNMENT AUTHORISATIONS - EXPORT LICENCES TO BE OBTAINED FROM OTHER COUNTRIES OR NATIONALLY. ....	17
<b>CHAPTER II – PRICE AND PAYMENT .....</b>	<b>19</b>
ARTICLE 10. TAXATION .....	19
ARTICLE 11. PRICE - AMOUNT .....	19
ARTICLE 12. CONDITIONS OF PAYMENT .....	20
ARTICLE 13. INVOICING .....	21
ARTICLE 14. METHOD OF PAYMENT, STOP PAYMENT PROCEDURE.....	22
ARTICLE 15. PLEDGE, ASSIGNMENT.....	22
ARTICLE 16. SUBCONTRACTING .....	23
<b>CHAPTER III – EXECUTION OF THE SERVICE.....</b>	<b>24</b>
ARTICLE 17. EXECUTION DEADLINES .....	24
ARTICLE 18. PENALTIES .....	24

ARTICLE 19. SUSTAINABLE DEVELOPMENT .....	24
ARTICLE 20. TECHNICAL DOCUMENTATION AND RESOURCES PROVIDED TO THE CONTRACTOR .....	25
ARTICLE 21. ADDITIONAL AND AMENDING SERVICES .....	25
ARTICLE 22. TRIGGERING OF AN OPTIONAL TRANCHE .....	27
ARTICLE 23. DELIVERY .....	27
ARTICLE 24. VERIFICATION OPERATIONS .....	28
ARTICLE 25. ADMISSION, ADJOURNMENT, REDUCTION SAND REJECTION .....	28
<b>CHAPTER IV – INTELLECTUAL PROPERTY.....</b>	<b>29</b>
ARTICLE 26. DEFINITIONS .....	29
ARTICLE 27. PROVISIONS PERTAINING TO SOFTWARE .....	30
ARTICLE 28. PROVISIONS PERTAINING TO PATENTS .....	36
ARTICLE 29. PROVISIONS PERTAINING TO PRIOR KNOWLEDGE .....	38
ARTICLE 30. PROVISIONS PERTAINING TO RESULTS .....	39
ARTICLE 31. COMMERCIALISATION OF RESULTS FOR THE BENEFIT OF OTHER INDUSTRIAL SECTORS .....	41
<b>CHAPTER V – SUMMARY LIST OF EXCEPTIONS TO THE CCAG .....</b>	<b>42</b>
<b>CHAPTER VI - APPLICATION OF CHAPTER 9 OF THE CCAG-MI: SPECIAL PROVISIONS FOR REPAIR AND MODIFICATION CONTRACTS .....</b>	<b>46</b>
<b>APPENDIX 1 - STANDARD CO-OWNERSHIP RULES APPLICABLE TO INVENTIONS RESULTING FROM SERVICES COVERED BY ARTICLE 28.1. ....</b>	<b>47</b>

## **CHAPTER I – GENERAL**

### **ARTICLE 1. GENERAL OBLIGATIONS OF THE PARTIES**

#### **1.1. FORM OF NOTIFICATIONS AND INFORMATION**

By way of derogation from Article 3.1.2 of the CCAG mentioned in the tender :

For items handed over in person, the date and, if applicable, the time, mentioned on a receipt are considered to be those of the notification.

If the notification is made via the purchaser profile, the parties are deemed to have received said notification on the date on which the document was made available via the purchaser profile.

If the notification is made via an email address, the parties are deemed to have received said notification on the date on which the document was sent.

If the notification is made via a letter sent by post, the date mentioned on the supporting letter is deemed to be that of the notification date.

#### **1.2. CONTRACTOR REPRESENTATION**

The provisions of Article 3.4.2 of the CCAG are completed as follows:

The Contractor is obliged to notify CNES of any modifications occurring in the course of execution of the Contract relating to distribution of the capital of the Contractor or the persons or groups which control the Contractor, and the groups of which it is a member. In the event of failure to do so, the Contractor shall incur application of the same provisions as those provided for by the CCAG applicable to the Contract, if it does not provide notification of the modifications mentioned in Article 3.4.2.

A ruling instituting a contingency procedure or legal receivership procedure shall be notified immediately to CNES by the legal administrator nominated for this purpose. The same applies to any ruling or decision which may affect the execution of the Contract.

In the case of contingency procedures or legal receivership, CNES shall send a formal notice to the administrator enquiring whether the Contract must be executed.

In the case of contingency or legal receivership procedures without an administrator, pursuant to Article L.621-4 of the French Commercial Code, this formal notice shall be sent to the Contractor if, after assent from the legal representative, the Contractor has been expressly authorised to exercise the option in Article L.622-13 of the same Code.

In the case of a negative response or no response within one month from the date of dispatch of the formal notice, termination of the Contract shall be pronounced. This one-month period may be extended or reduced, if, before the expiry of this period, the official receiver has granted the administrator an extension or has reduced the time period.

The termination of the Contract shall take effect on the date the administrator or the Contractor decides to abandon execution of the Contract or on the date when the one-month time period lapses. This shall not entitle the Contractor to any compensation.

In the case of the Contractor undergoing liquidation proceedings, the Contract shall be terminated if, after the liquidator has received formal notice under the conditions provided for in Article L. 641-10 of the French Commercial Code, the latter indicates that it will not assume the obligations of the Contractor.

If termination is decided, it shall take effect on the date of the event. This shall not entitle the Contractor to any compensation.

By signing the Contract, the authorised representative of the Contractor confirms the accuracy and completeness of all the information provided, as listed in Articles R.2143-5 et seq. of the French Public Procurement Code, under penalty of termination of the Contract as of right due to a breach by the Contractor.

### **1.3. GROUP OF ECONOMIC OPERATORS**

The provisions of Article 3.5 of the CCAG applicable to the Contract are completed as follows.

If the service is executed by a group of economic operators, unless otherwise specified in the Contract, the Contractor group is jointly liable. In this case, each economic operator that is a member of the group undertakes to execute the service(s) attributed to it in the Contract.

The Contract indicates the amount and detailed distribution of the services that each member of the group undertakes to execute.

The Contract mentions the representative who represents all the members with regard to CNES, and coordinates the services provided by the group.

Unless otherwise specified in the Contract, the representative of the joint liability group is jointly and severally liable, for execution of the Contract, with each member of the group for its contractual obligations with regard to CNES.

## **ARTICLE 2. CONTRACTUAL DOCUMENTS**

By way of derogation from Article 4 of the CCAG applicable to the Contract :

- the “Contractual Documents” Article of the Contract sets out the list of contractual documents and their order of priority ;
- CNES shall provide the Contractor, solely on the written request of the latter, with a single copy of the Contract or a certificate of assignability.

Since the Contract is drawn up in French, if part of a text or an entire text of the Contract is translated into any other language as required by the Contractor, only the French version of the Contract shall be binding.

## **ARTICLE 3. CONFIDENTIALITY - PERSONAL DATA**

### **PROTECTION - SECURITY MEASURES**

#### **3.1. CONFIDENTIALITY**

It is expressly agreed between the Parties that the Results stemming from this Contract do not constitute Confidential Information within the meaning of this Contract.

The provisions of Article 5.1.2 of the CCAG applicable to the Contract are replaced by:

Confidential information refers to any information and/or data, regardless of the subject (technical, industrial, financial, commercial, etc.), type (know-how, method, process, technical and installation detail, etc.), medium (paper - written document or printout, digital - CD-Rom, USB flash drive, sample, drawing, model, etc.) and transmission mode (written, verbal, electronic, including over a network, etc.) which is identified by the disclosing party as confidential via the apposition or addition on their medium of a stamp or wording (hereinafter referred to as "Confidential Information"). During verbal communication, the confidential nature of the information is brought to the attention of the party receiving it when said information is communicated, and is confirmed in writing at the latest thirty (30) days after its disclosure, it being understood that said information shall be deemed to be confidential during this thirty (30) day period.

## **3.2. SECURITY MEASURES**

The provisions of Article 5.3 of the CCAG applicable to the Contract are completed as follows.

### **3.2.1 ACCESS TO THE CNES SITE**

We remind you that CNES is subject to the French order dated 3 July 2012, pertaining to the protection of the nation's scientific and technological potential (PPST package). Under the terms of this package, there is a restricted access and movement zone, called the ZRR. A system of administrative authorisations issued by the Ministry for Higher Education and Research is set up, enabling the issue of a badge for access to the ZRR. Consequently, for services requiring access to the ZRR, the Contractor shall be responsible for taking all necessary steps to obtain administrative authorisations for the persons concerned, in order to provide CNES with the guarantee that :

- the activities will start as of notification of the Contract,
- there will be continuity of activities in the event of absence of personnel working on the services.

The Contractor, for the execution of the services, shall abide by the obligations of the laws and regulations related to the protection of workers and working conditions, in particular articles R 4511-1 et seq. of the French Labour Code (prevention plan) and French Order no. 2008-244 dated 7 March 2008 relating to the French Labour Code (transport safety protocol). It must take all measures to ensure the safety of its personnel, other personnel on the premises and all other persons working on the site where it performs its assignment, in accordance with the departments of the establishment responsible for safety in the workplace.

The Contractor shall notify its subcontractors that the obligations specified in the previous paragraph also apply to it; and the Contractor is also responsible for ensuring that these obligations are fulfilled.

If, due to specific conditions of the Contract, the Contractor wants to exercise any deviation allowed by the laws and regulations, the same must be formally communicated to CNES.

In order to prepare the documents that are deemed mandatory by the above-mentioned regulations, the Contractor shall systematically provide CNES with the following general information before commencement of the work :

- The expected duration of the work;
- Number of persons involved;

- Name of the manager or head of the organisation;
- Name and position of the person responsible for execution of the work, the persons to be contacted in the event of any safety problems ("Safety manager", etc.);
- Type of work that may be subcontracted; name or corporate name of any subcontractor organisations; night shifts and isolated work.

The Contractor also undertakes to comply with the general safety instructions displayed on the premises or those which have been directly provided to it on the commencement of the work at the CNES site.

In addition, apart from the services that involve simple meetings or accompanied visits, the Contractor, before the execution of the Contract, shall communicate the following information:

- The status of compliance of the "tools" used: equipment, materials, lifting and handling equipment (maintenance data sheets and periodic inspections);
- Risks in the techniques used (working at heights, heavy lifting, radiation, etc.);
- Nature of the hazardous materials and products used and their conditions of use, storage and transport;
- Material means of prevention used (against falls from a height, intoxication, noise, etc.);
- Procedures and safety instructions related to the operations;
- The skills and training required for the posts (qualifications for electricians, machine operators, vehicle drivers, welders, etc.) and the corresponding certificates.

The Contractor must participate in the "preliminary inspection of the work sites" and if required in the safety meeting that follows. This visit shall be conducted on the initiative of the person responsible for the project or the site manager in charge, in collaboration with the department for safety in the workplace. It shall be organised at least one (1) working day before the commencement of the work. The Contractor shall comply with the preventive measures which have been adopted by a common agreement in the prevention plan and transport protocol.

Furthermore, for any work-related accident sustained by personnel working at a CNES site, the Contractor undertakes to contact the department manager in charge of safety in the workplace in order to provide the following information :

- Upon occurrence of the accident, a copy of the duly completed accident declaration form (name, age, nature of the injuries, circumstances of the accident);

In addition, at the end of each quarter, the Contractor undertakes to provide the average number of staff working in the centre, the number of hours worked, declared work-related accidents, names of the victims, indication of the number of days off work.

### **3.2.2 REQUEST TO RECEIVE VISITORS ON THE CONTRACTOR'S INITIATIVE**

Upon notification of award of Contract at the latest, the Contractor shall draw up a list of names of staff members ("company correspondents") who shall be the only ones empowered to authorise visitor access to the Centre, for purposes related to execution of the Contract. These employees must be accredited by the competent entities in accordance with the Order of 3 July 2012 relating to protection of the nation's scientific and technical potential.

This list is sent to the Centre's security service and the Contractor shall be responsible for updating it.

During the visit, the company correspondent shall be responsible for accompanying the visitor (reception-visit-departure) and shall abide by all the rules provided for in the Centre's protection plan for scientific and technical potential (PPST).

CNES may carry out an inspection at the Contractor's premises during execution of the Contract to ensure that the Centre's access rules are well-known and properly enforced.

### 3.2.3 ACCESS TO CNES INFORMATION SYSTEMS

The Contractor undertakes to comply with the "CNES policy on security of the information system" CNES-SMC-P01.09-796 v1 dated 26 January 2011, cited as an applicable document in the Information System Security Requirements (CPSSI). The Contractor undertakes to comply with all the applicable requirements of the CPSSI as agreed upon signature of the Contract, as well as any subsequent versions and revisions of said requirements. If said subsequent versions and revisions generate significant costs for the Contractor, the latter shall notify an express reservation in writing within 5 days of receiving the subsequent versions and revisions, and keep an up-to-date Security File related thereto.

The connection of an information system belonging to the Contractor or any other external company to the CNES transmission network and any modification to the network thus connected belonging to the Contractor or any other external company shall be subject to prior written authorisation from CNES.

The Contractor undertakes to make each member of its staff working on CNES equipment and material through an IP network sign and abide by a confidentiality agreement countersigned by itself and to make the authorisation requests for access to the required network services.

CNES may carry out inspections, on the Contractor's premises, to verify implementation of the security requirements to which the Contractor has committed.

Furthermore, the Contractor accepts that the inspections pertaining to the security of information systems may be carried out by competent authorities (in particular, *Commission Nationale Informatique et Libertés* – French Data Protection Agency, *Agence pour la Protection des Programmes* – French Programme Protection Agency, *Direction Centrale du Renseignement Intérieur* – French Intelligence Agency, *Direction de la Protection et de la Sécurité de Défense* – Defence Protection and Security Agency).

### 3.2.4 SPECIFIC PROVISIONS FOR PROTECTION OF SECRECY

In the framework of the laws and regulations for protection of secrecy in affairs of national defence, the Contractor undertakes to ensure the protection of the classified information or media that it may come to be aware of and/or possess under this Contract, taking into consideration the special provisions stipulated in the Contractual Security Plan appended to this Contract.

The Contractor acknowledges having understood and agreed to the following terms relating to its obligations resulting from knowing or possessing classified information or media protected by national defence secrecy :

- the French Penal Code, in particular Articles 413-9 to 414-9;
- the general inter-ministerial directive No. 1300 on the protection of secrecy in affairs of national defence,

The Contractor agrees to comply with its obligations resulting from the implementation of these measures and those related to all the laws and regulations pertaining to the protection of secrecy in affairs of national defence,

Any violation or failure to comply with these security measures by the Contractor, even if resulting from carelessness or negligence, may result in the termination of the contract for its fault, and withdrawal of the company's authorisation to access the classified information and media, without any prejudice to penalties under the provisions of Articles 413-9 to 413-12 of the French Penal Code.

### **3.2.5 ADDITIONAL STIPULATIONS RELATING TO CONTRACTS REQUIRING THE CONTRACTOR TO POSSESS CLASSIFIED INFORMATION OR MEDIA**

A Contractual Security Plan must be signed by all the Parties (including approval from the CNES defence security Officer and/or the DGA, depending on the case) within a maximum period of 3 months from the date on which the Contract is notified. This appendix is an integral part of the Contract and the Contractor undertakes to implement all the protection measures laid down therein.

The working premises of the Contractor must provide all guarantees to ensure the protection of secrecy in affairs of national defence, and may be inspected by CNES.

The Contractor undertakes to report any modification that could possibly affect the protection of the classified information or media provided, sent or held under the Contract on its premises.

Upon completion of the classified work, the Contractor shall have a one-month period to inform CNES, who shall indicate where to send the classified information or media that were in the possession of the Contractor up until then. The latter shall comply with this specification. In the event of non-compliance with these stipulations, the Contractor shall incur the penalty provided for in the Contract.

In the event of failure to execute the work required by CNES after verification of the physical suitability of the premises in the conditions defined in the general inter-ministerial directive No. 1300 on the protection of secrecy in affairs of national defence, the Contractor shall be liable.

### **3.2.6 ADDITIONAL STIPULATIONS FOR RESEARCH OR STUDY CONTRACTS**

The Contractor acknowledges that CNES has the authority to search among the documents and materials in its possession for classified information or media related to the Contract, and to have the safes and premises sealed, where the documents and materials requested by CNES will be consolidated, in order to ensure their protection.

The classified information or media listed in the appended Contractual Security Plan must be returned in full to CNES.

The working premises of the Contractor must provide all guarantees to ensure the protection of secrecy in affairs of national defence, and may be inspected by CNES.

### **3.2.7 PROTECTION OF SECRECY IN AFFAIRS OF NATIONAL DEFENCE FOR SENSITIVE CONTRACTS**

In the framework of laws and regulations for protection of secrecy in affairs of national defence, the Contractor, during the execution of the Contract, shall take all appropriate measures to ensure absolute protection of the classified information or media that may be held in the

department for which the Contract is being executed or at any other place where this Contract is executed.

The Contractor acknowledges that :

- it has understood Articles 413-9 to 413-12 of the French Penal Code,
- it is not entitled to know or possess information protected by secrecy in affairs of national defence.

The Contractor undertakes to have an individual declaration signed by all staff members under its responsibility executing the services in any capacity on its behalf, attesting that :

- it has understood Articles 413-9 to 413-12 of the French Penal Code,
- it is not entitled to know or possess information protected by secrecy in affairs of national defence, failing which it shall be subject to legal prosecution.

The Contractor shall ensure that only the persons who have signed the above declaration have access to the place of execution of the services.

The Contractor undertakes to deliver to CNES the above individual declaration(s) prior to access by the relevant staff members to the place of execution of the services.

No deviation from the above specifications shall be accepted by or requested from CNES, even in the case of any unforeseen, fortuitous or even urgent replacement of a member of the Contractor's staff.

Any violation or failure to comply with these security measures by the Contractor, even if resulting from carelessness or negligence, may lead to termination of the Contract or imposition of any other penalties stipulated in the Contract, without any prejudice to criminal sanctions.

#### **ARTICLE 4. WORKER PROTECTION AND WORKING CONDITIONS**

The provisions of Article 6 of the CCAG applicable to the Contract are completed as follows.

By signing the Contract, the Contractor or its authorised representative confirms, at the risk of automatic termination of the Contract of its own doing, that all services it provides or subcontracts shall be performed in compliance with the provisions of the laws and regulations referred to in Article 6 in the CCAG applicable to the Contract.

CNES is authorised, at any given moment, to take any measure to verify the legality of the situation of the employees of the Contractor and of its subcontractors in this respect.

Every six months from the date of Contract award, the Contractor shall send the documents specified in Articles D 8222-5 and D 8222-7 of the French Labour Code. Said documents shall comply with Article D 8222-8 of the French Labour Code, under penalty of termination of the Contract by CNES due to breach by the Contractor alone, after formal notice has been issued.

In addition, under penalty of automatic termination of said Contract due to a breach by the Contractor, the Contractor or its authorised representative asserts that the work equipment (as defined in Article R.4311-1 et seq. of the French Labour Code) used for the execution of the Contract complies with the regulations in force.

## **MEMBERSHIP IN THE “ASSOCIATION PROVIDING SUPPORT TO ORGANISATIONS IN THE FIELD OF RISK PREVENTION, SAFETY AND THE ENVIRONMENT”**

At the Toulouse Space Centre, there is an “Association providing support to organisations in the field of risk prevention, safety and the environment” whose objective is to assist organisations in meeting their legal and contractual obligations in these areas.

The Contractor undertakes to join the association if it performs services at the Toulouse Space Centre. It shall inform CNES of the date of effective membership which must be on notification of the Contract at the latest.

All these provisions constitute a contractual obligation necessary to the proper execution of the service.

## **ARTICLE 5. PROTECTION OF THE ENVIRONMENT, HEALTH AND SAFETY**

The provisions of Article 7 of the CCAG applicable to the Contract are completed as follows.

### **SPECIFIC PROVISIONS RELATING TO REACH AND APPLICABLE TO CONTRACTORS IN THE EUROPEAN UNION**

As part of compliance with the rules and obligations under EC Regulation No.1907/2006 regarding Registration, Evaluation and Authorisation of Chemicals (REACH) and specifying, in particular, the conditions of use applicable to these substances (restrictions and authorisations), Contractors shall ensure that all necessary measures are taken in order to guarantee to CNES perfect compliance with all applicable provisions in the REACH regulations,

### **SPECIFIC PROVISIONS RELATING TO REACH AND APPLICABLE TO CONTRACTORS OUTSIDE THE EUROPEAN UNION**

Contractors outside the European Union who supply a chemical substance or content in a preparation or an item shall designate an exclusive representative, in conformance with the provisions of REACH, who shall respect all the obligations applicable to importers. The Contractor shall be responsible for contractual relations with this exclusive representative it designated.

For the supplies due by the Contractor under the Contract, the Contractor shall ensure that the substances supplied under the contract are registered in accordance with the provisions of REACH. The Contractor shall notify this registration to CNES before commencing execution of the Contract.

### **RISK ANALYSIS**

For the entire duration of the Contract, the Contractor undertakes to conduct risk analysis commensurate with the technical and programming considerations of the Contract, to update it at each key stage and to integrate this approach and its results into the project risk management. This analysis shall mainly consist in identifying first the substances which, in the context of current regulation and foreseeable changes thereto, based on Article 57 of EC Regulation No.1907/2006 regarding Registration, Evaluation and Authorisation of Chemicals

(REACH), are critical for the project, and second, the actions to be implemented to limit the impact on the project in terms of performance, cost and time.

## **ARTICLE 6. TRANSPARENCY, FIGHT AGAINST CORRUPTION, MODERNISATION OF THE ECONOMY AND PATENT INFRINGEMENT**

In accordance with Article 17.4 of French law no. 2016-1691 of 9 December 2016 relating to transparency, the fight against corruption and the modernisation of the economy, CNES may be required to carry out assessments of its suppliers. The Contractor therefore undertakes to provide CNES with all the elements required within this framework. Failure to comply with this requirement may result in termination of the Contract due to a breach by the Contractor.

### **6.1 PATENT INFRINGEMENT MEASURES**

The Contractor undertakes to ensure that the hardware (tools/components, etc.), software, processes, etc. used to perform the services covered by the Contract do not constitute patent infringement or other infringement of intellectual property rights, unfair competition or free riding.

The Contractor therefore undertakes to provide CNES with all the elements required within this framework. Failure to comply with this requirement may result in termination of the Contract due to a breach by the Contractor.

### **6.2 PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM**

The Contractor undertakes to comply with all the regulations on the prevention of money laundering and the financing of terrorism. It also undertakes to refrain from using, lending, investing or otherwise making the deliverables covered by the Contract available in operations that would otherwise contravene these regulations.

By regulations on the prevention of money laundering and the financing of terrorism, we mean:

- All French legal and regulatory provisions concerning the prevention of money laundering (in particular, those contained in Book III, Title II 'Other offences against property' of the French Penal Code) and the prevention of the financing of terrorism (in particular, those contained in Book IV, Title II 'Terrorism' of the French Penal Code, and those contained in Book V, Title VI 'Obligations concerning the prevention of money laundering, the financing of terrorist activities, prohibited gambling and gaming, and tax avoidance and fraud' of the French Monetary and Financial Code);
- Foreign regulations relating to the prevention of money laundering and the financing of terrorism, insofar as they are applicable.

The Contractor acknowledges that compliance with the above regulations and obligations constitutes a major condition for the awarding of the Contract.

The Contractor declares that, to its knowledge, its representatives, social representatives, managers and employees :

- Are not currently affected by, or subject to Sanctions Regulations;
- And/or are not involved in activities that would be prohibited by Sanctions Regulations.

Failure to comply with the above-mentioned obligations may result in termination of the Contract due to a breach by the Contractor.

### 6.3 FIGHT AGAINST CORRUPTION

The Contractor undertakes to comply with all Anti-Corruption Regulations and to refrain from using, lending, investing, or otherwise making available the deliverables covered by the Contract in operations that constitute or contribute to an act of corruption or influence peddling.

To the extent that it is subject to the provisions of Article 17 of Law No. 2016-1691 on transparency, anti-corruption and modernising business practices, the Contractor declares that it has taken all necessary measures to prevent any violation of these anti-corruption and influence peddling laws and regulations. In particular, it has adopted and implemented adequate procedures and codes of conduct accordingly.

In this context, CNES may be required to carry out assessments of the Contractor and its suppliers. The Contractor therefore undertakes to provide CNES with all the elements required within this framework.

In addition, the Contractor undertakes to inform CNES immediately :

- of any investigations or equivalent measures carried out on the basis of one of the Anti-Corruption Regulations ;
- of any convictions – initial and, if applicable, final convictions – against them or against a person acting on their behalf on the basis of one of the Anti-Corruption Regulations ;
- if its company or those of its subcontractors appear in one of the national and international exclusion lists ;
- if it signs a settlement agreement concerning a breach of one of the Anti-Corruption Regulations, or if its subcontractors or any person acting on their behalf do so.

Anti-Corruption Regulations means :

- all the French legal and regulatory provisions on the anti-corruption and influence peddling (in particular those contained in Book IV, Title III entitled 'Attacks on the State's authority' and Title IV 'Undermining public trust' in the French Penal Code);
- foreign regulations on tackling corruption outside its territorial scope, in particular the United States (Foreign Corrupt Practices Act) and the United Kingdom (UK Bribery Act), insofar as they are applicable.

The Contractor acknowledges that compliance with the above regulations and obligations constitutes a major condition for the awarding of the Contract.

The Contractor declares that, to its knowledge, its representatives, social representatives, managers and employees:

- Are not currently covered by, or subject to restrictive measures adopted, administered, imposed or implemented by States, international organisations or any other equivalent.
- And/or are not involved in activities that would be prohibited by Sanctions Regulations.

Failure to comply with the above-mentioned obligations may result in termination of the Contract due to a breach by the Contractor.

## ARTICLE 7. INFORMATION CONCERNING SUPPLIERS OF THE CONTRACTOR

If so requested by CNES, the Contractor shall provide the latter with the following information, in respect of suppliers (companies or organisations) that are not paid directly by CNES in the context of services provided under the Contract :

- At the start of the Contract and when modifications are made, the list of its suppliers, with the following details :
  - The corporate name of the company ;
  - Its usual name and any acronym ;
  - Country ;
  - SIREN and SIRET business registration no. for French suppliers ;
  - VAT no. or national ID Code for foreign suppliers ;
  - The company's links to other companies (with % interest / shareholding).
  
- At the start of each calendar year and at the latest on 31 March, the portion in an amount of payments from the previous financial year to suppliers of the above list made to :
  - Small and medium-sized enterprises (SME, "PME" in French, within the meaning of French law, regardless of shareholding criteria) ;
  - Intermediate-sized companies ("ETI" in French) ;
  - Large companies ("GE" in French), Others.

The different types of suppliers indicated above are defined as follows :

- SME: definition of French Decree 2009-245 of 2 March 2009, which itself refers to recommendation No. 2003/361/EC dated 6 May 2003.  
*(Criteria of staff numbers and turnover / balance sheet total, taking into account notions of autonomous company, partner company and related company as described in the reference documents above).*
  - with fewer than 250 staff members;
  - with annual turnover of less than €50 million or an annual balance sheet total of less than €43 million.
  
- ETI (Intermediate-sized company) :
  - company which does not meet the criteria for SMEs ;
  - with fewer than 5,000 staff members ;
  - with annual revenue of less than €1.5 billion or a total annual balance of less than €2 billion.
  
- GE (Large company):
  - company that employs over 5,000 people ;
  - or that has annual turnover exceeding €1.5 billion or an annual balance sheet total exceeding €2 billion.
  
- Others (laboratories, universities, research bodies, public institutions, the civil service, etc.).

## **ARTICLE 8. ASSESSMENT OF PRODUCTION COSTS**

### **ASSESSMENT OF PRODUCTION COSTS OF FRENCH CONTRACTOR(S) OR SUBCONTRACTORS**

Pursuant to Article 54 of the French Financial Act of 1963 (no. 63-156 of 23 February 1963) and by application :

- of Articles L2196-4 et seq. of the French Public Procurement Code and Articles R 2196-8 et seq. of the same Code ;
- of the Order of 20 December 2000 defining the general framework for determining the costs and production costs of the services of companies working in the aerospace field and in the telecommunications and electronic engineering fields ;
- or of the Accounting Terms and Conditions applicable to determining the production costs of the services of engineering firms, design departments of engineering consultants and consultancy firms;

the Contractor shall provide CNES, if requested to do so by the latter, with any information on the technical and accounting elements of the production cost of services covered by the Contract.

The Contractor's accounting must enable, after the event, calculation of the production cost of each element produced in accordance with the work breakdown structure and the various work packages of the Contract, following an accounting plan determined by mutual agreement.

The Contractor is obliged to allow and facilitate any verification of documents or on-site verification by CNES, or any other organisation representing it, to determine the accuracy of the information.

The Contractor shall notify its subcontractors that the obligations set out in this Article also apply to them; the Contractor is also responsible for ensuring that these obligations are fulfilled.

CNES shall treat the information collected during the production cost control operations as strictly confidential.

If the Contractor or its subcontractors do not provide the information requested or provide inaccurate information and after formal notice has gone unanswered, CNES may decide to suspend upcoming payments up to a limit of one-tenth of the Contract amount if the breach is attributable to the Contractor and one-tenth of the amount of supplies or services subcontracted if the breach is attributable to the subcontractors. After further formal notice remaining unanswered, these withheld payments may be transformed into a definitive penalty following a decision by CNES, independently of possible termination, due to breach by the Contractor, in the conditions set out by the CCAG applicable to the Contract.

### **ASSESSMENT OF PRODUCTION COSTS OF FOREIGN CONTRACTORS OR SUBCONTRACTORS**

The services executed under the Contract may be subject, on express request by CNES or the Contractor, to production cost control. To this effect, the Contractor shall keep accounts to enable calculation, after the event, of the production cost of each element produced in accordance with the work breakdown structure and the various work packages of the Contract, following an accounting plan determined by mutual agreement.

The Contractor thus undertakes :

- for its own services: to communicate, on express request of CNES, all information on the technical and accounting elements of the production cost of the services under the Contract, in order to identify :
- expenses related to the supplies, raw materials, finished products, etc. that are considered part of the services ;
- work units (hours, person-month, etc.) related to the labour and machinery actually employed for the execution of the services, - all other costs directly assignable to the Contract.

The rates and coefficients defined and notified by the competent national authorities or by the European Space Agency or any other competent official entity shall be used for the valuation of the costs.

- for subcontracted services: to negotiate with their subcontractors, clauses similar to the previous clauses enabling verification of the production costs pertaining to the share of the services executed by the latter.

The national monitoring organisation may be entrusted with collecting the requested information and transmitting it to CNES directly or after analysis and evaluation.

CNES shall treat the information collected during the production cost control operations as strictly confidential.

If the Contractor or its subcontractors do not provide the information requested or provide inaccurate information and after formal notice has gone unanswered, CNES may decide to suspend upcoming payments up to a limit of one-tenth of the Contract amount if the breach is attributable to the Contractor and one-tenth of the amount of supplies or services subcontracted if the breach is attributable to the subcontractors. After further formal notice remaining unanswered, these withheld payments may be transformed into a definitive penalty following a decision by CNES, independently of possible termination, due to breach by the Contractor, in the conditions set out by the CCAG applicable to the Contract.

## **ARTICLE 9. GOVERNMENT AUTHORISATIONS - EXPORT LICENCES TO BE OBTAINED FROM OTHER COUNTRIES OR NATIONALLY.**

The Contractor undertakes to provide and keep up to date (throughout the duration of the activity) a risk analysis that is commensurate with the technical and programming considerations.

The Contractor is obliged to implement, in due time, all the resources required to obtain all the authorisations (licences, agreements, etc.) required for manufacturing, use, integration, sale and/or export/re-export of all relevant items under the regulations applicable to this matter.

CNES agrees to provide the Contractor in due time with all documents or information required to obtain the authorisations.

In compliance with the applicable regulations, the Contractor shall provide a copy of the authorisation requests sent and all authorisations obtained to CNES.

If the Contractor is unable to obtain the authorisations, it undertakes to provide CNES with all the key items relating to said authorisations or their requests.

The authorisations thus obtained shall be subject to progress reports on key dates specified in the Contract.

The Contractor shall notify CNES in writing, as soon as it becomes aware thereof, of any refusal, suspension or withdrawal of authorisation, including any changes in the regulations that may subsequently affect the execution of the Contract.

In this case, CNES and the Contractor shall meet as quickly as possible to determine the conditions of implementation of alternative solutions; these solutions can be of a technical and/or contractual nature. If, despite their best efforts, no replacement is possible, or if the alternative solutions require the implementation of resources which are not accounted for in the Contract budget, the provisions of Article 38.1 of the CCAG-PI or Article 43.1 of the CCAG-MI shall apply.

In any case, if, despite the implementation of the required resources, the Contractor is unable to obtain its authorisation, the latter shall not be held liable for fault.

The provisions of this article must be complied with, in turn, by the Contractor's subcontractor(s).

## **CHAPTER II – PRICE AND PAYMENT**

### **ARTICLE 10. TAXATION**

The VAT rate applicable is the rate in force on the date of the obligating event.

With regard to the trade of goods and services within the European Union, intra-European Union VAT regulations shall be applicable.

If the services relate to a project for export that is likely to benefit from the duty-free status provided for in Article 275-1 of the French General Tax Code, CNES shall provide the Contractor with the necessary certificates of duty-free purchases.

CNES shall reimburse the Contractor all taxes that may become due despite issuance of a certificate or following abandonment or modification of the initial purpose, on submission of the relevant documentary evidence.

The amount is set excluding Value-Added Tax (VAT) and dock dues when the services and supplies of the Contractor are performed in and/or delivered to French Guiana, where the VAT regime is not applicable (cf. Article 294 of the French General Tax Code).

### **ARTICLE 11. PRICE - AMOUNT**

The tender shall specify the type of the amount of the different work packages of the Contract, as well as that of the price(s).

Articles 10.1.2., 10.2.2. and 10.2.3. of the CCAG-FCS, PI, TIC and MOE and Articles 11.1.2., 11.2.2. and 11.2.3. of the CCAG MI and Article 10.4. of the CCAG Works shall not apply.

The prices are considered to be fixed prices. If the Contract provides for a price revision, prices are revised on the date or at the frequency provided for by the special contractual documents. In the case of price revision, the tender shall indicate the price fixing date, the parametric formula(e), the dates or periods for recording the final values of the indices in accordance the contractual time limits; the revision coefficients are calculated to five decimal places, with no rounding, for the intermediary calculations and four decimal places, with no rounding, for the final coefficient. The revised price is obtained by applying the final coefficient with four decimal places to the price to be revised. The retained revised price consists of two decimal places, the last one of which is never rounded off. Any delay may not give rise to a revised amount greater than that obtained based on the contractual time limits. Invoices with revised prices shall be separate from the invoices with the initial amount.

In the case of unit prices, they shall be mentioned in a note appended to the Contract.

In the event of co-financing by the Contractor, the Contract shall indicate the amount financed by the former (in percentage and value) and the total co-financed amount.

### **ARTICLE 12. CONDITIONS OF PAYMENT**

The following Articles shall not apply:

- Articles 10, 12, 13, 14, 15, 16 and 18 of the CCAG-Works ;

- Article 11 of the CCAG-PI, FCS, TIC ;
- Article 12 of the CCAG-MI ;
- Article 11 of the CCAG-MOE.

## **PAYMENT SCHEDULE**

All payments are set out in a schedule containing the number, the event date at the latest (normal progress of the work, delivery, execution, installation, start-up, etc.), the description of the technical or contractual phase and the amount of each event. Furthermore, the schedule shall contain a reference to advances which are not subject to penalties, progress payments or partial definitive payments, from which penalties may be deducted, as well as the balance amount from which penalties may be deducted.

With the agreement of the Parties, CNES may, without modifying the total amount, give notice during the term of the Contract of a new payment schedule by letter serving as a routine order. The Contractor shall confirm acceptance by returning a copy of the letter duly signed.

## **ADVANCE**

The advance shall be calculated on the amount of the Contract, subsequent contract, tranche or purchase order, inclusive of all taxes. It is paid before commencement of work and an invoice shall be issued mentioning the VAT rate applied. The advance amount and conditions of its payment shall be specified in the payment schedule. The advance cannot be updated or revised; the price revision applies only to the difference between the initial amount, the partial definitive payment or the balance amount and the amount of the advance to be deducted.

If the Contract is in tranches, the advance shall be calculated on the amount of closed or consolidated tranches. It shall be recovered within each annuity or each tranche.

Payment thereof shall, in some cases, be subject to the provision of a first demand guarantee by the Contractor to reimburse, if required, the agreed advance amount.

## **PROGRESS PAYMENTS**

Progress payments are intermediary payments paid to the Contractor on presentation of an invoice. Their amount is set forth in the payment schedule and shall be fixed based on the progress of the services.

## **SYSTEM FOR ADVANCES AND PROGRESS PAYMENTS**

Payment of advances and progress payments are not treated as definitive payments; in the case of progress payments, their payee is liable for them until the next definitive payment (partial definitive payment or balance amount); in the case of advances, the collection terms are specified in the payment schedule, and the payee is liable for them until payment, when the advance is collected (partial definitive payment).

## **PARTIAL DEFINITIVE PAYMENTS**

The partial definitive payment is the non-retractable payment corresponding to the completion of services or technical phases specified for a work package, tranche or purchase order. The services or technical phases corresponding to the partial definitive payments shall be clearly identified in the Contract payment schedule.

## **BALANCE PAYMENT**

Payment of the Contract balance amount may be subject to the presentation of supporting documents or any documents specified in the Contract.

## **PAYMENT PERIODS**

Unless otherwise specified in the Contract, payment of the amount due is made within a maximum period of 30 days calculated from the date of receipt by CNES of the payment request (invoice) from the Contractor in accordance with the provisions of the Contract together with all necessary supporting documents.

## **DEFAULT INTEREST**

In the case of late payment, default interest shall be payable by CNES. This interest shall be paid on submission of the corresponding invoice by the Contractor. Pursuant to Decree no. 2013-269 of 29 March 2013, it shall be calculated by applying to the amount due (inclusive of VAT) a rate *equal to the interest rate applied by the European Central Bank to its most recent main refinancing transactions, applicable on the first day of the semester of the calendar year during which the late payment penalties started to accrue, plus eight percentage points* from the date following expiry of the final payment date (as defined above) until and including the date on which the principal amount is settled.

In the event that the Contract provides for spacing out its execution and the resulting payments, no amount receivable shall become due and no late payment penalty shall start to accrue before the dates provided for in the Contract plus the payment period (as defined above).

## **ARTICLE 13. INVOICING**

Invoices are drawn up in one original copy, in the name of the CENTRE NATIONAL D'ETUDES SPATIALES.

They must refer to the Contract number in full. They must include, in full, the reference of the payment schedule and the details of the event entitling payment (number, date, technical or contractual phase, amount). In the absence of the identifying description, the progress payment requests and invoices shall be sent back to the Contractor.

These invoices may not be issued before completion of the event entitling payment and must be accompanied, if required, by the relevant documentary evidence (cf. Article 12).

Payment requests are sent electronically via the Chorus online portal, to which invoices are uploaded: <https://chorus-pro.gouv.fr>

As an exception, if an invoice is sent by post, it shall be drawn up and printed in one original copy sent to the department mentioned in the corresponding Article of the Contract.

## **ARTICLE 14. METHOD OF PAYMENT, STOP PAYMENT PROCEDURE**

CNES shall release the amount due on execution of the Contract by transfer to the bank or postal account of the Contractor specified in the Contract (one account per Contractor, per subcontractor receiving direct payment, and per currency when appropriate).

In the case of a joint-and-several liability group of contractors, payment shall be made to a single account opened in the name of the members of the group or the representative, except where the Contract provides for distribution of payments between the members of the group and indicates the terms of this distribution.

The authorised signatory is the Chairman of the CNES Board of Directors or any other person granted the right to authorise.

The CNES primary accounts manager, the GSC secondary accounts manager in Kourou, or the Director of the Accounts Department mentioned in the Contract shall be responsible for payments. All stop payment requests, pledges or assigns shall be notified to the CNES primary accounts manager, the GSC secondary accounts manager in Kourou or the CNES accounts manager, to be addressed to the Director of the Accounts Department of CNES in Toulouse.

## **ARTICLE 15. PLEDGE, ASSIGNMENT**

The Contract may be assigned or pledged (based on the shares attributed to the Contractor and its subcontractors to whom direct payments are made).

To this effect, CNES shall provide the Contractor, further to a request in writing, either with a copy of the original Contract duly signed stating that this document is delivered as a unique copy, in order to allow the Contractor to re-assign or pledge the claims arising from the Contract, or a certificate of assignability conforming to the model defined by order of the Minister for Economic Affairs dated 28 July 2020.

The unique copy of the Contract or the certificate of assignability shall be handed over by the assignee or pledged organisation to the designated CNES accounts manager as documentary evidence of the payment.

When confidentiality required in matters of defence precludes issuance of a copy of the Contract to the recipient of an assignment or pledge, CNES shall issue the Contractor a unique copy of the Contract or a certificate of assignability containing only the information conforming to the relevant level of confidentiality. The Contractor, for any other reason, may request that the contents of the unique copy of the Contract or the certificate of assignability be restricted to the information required for the assignment or pledge.

If any changes are made in the designation of the accounts manager or in the conditions of payment in the Contract, CNES shall annotate the changes made in the unique copy of the Contract or the certificate of assignability.

For any Contract requiring designation of several accountants, CNES shall issue as many unique copies of the contract or certificates of assignability as required, specifying on each document the name of the accountant to whom it must be issued. Each document shall mention only that part of the total amount receivable that the accountant to whom it is issued is required to disburse.

If the Contractor or the subcontractor to whom direct payment is made wishes to assign or pledge the receivables from the Contract in several parts, it may request restriction of the unique copy of the Contract to the amount mentioned in a purchase order, work package, tranche or subsequent contract, specifically featured individually in the Contract.

In the case of a Contract executed by a joint-and-several liability group of contractors, each organisation shall be issued a unique copy of the Contract or a certificate of assignability limited to the total services assigned to that specific organisation.

In the case of a Contract executed by a joint-and-several liability group of contractors, a unique copy of the Contract or certificate of assignability shall be issued in the name of the group, when the services performed by each of the organisations in the group are not mentioned individually. If the services are mentioned individually, a unique copy of the Contract or certificate of assignability corresponding to the service provided shall be issued to each organisation.

The assignment or pledge must :

- Be notified, to the person designated in the Contract pursuant to Article 14 of the CCAP under the conditions specified by Articles L. 313-23 to L. 313-35 of the French Monetary and Financial Code. Any notification to any other person, including the authorised signatory, is considered void ;
- Contain the number of the Contract entered into by CNES and, when appropriate, the purchase order number or number of the subsequent contract.

The payment of the assigned accounts receivable to the assignee under the Contract shall be subject to the production of the corresponding unique copy of the contract by the assignee.

The recipients of the pledges or assignments of accounts receivable may, during the execution of the Contract, request the person designated in the Contract to issue:

- A summary statement of services provided, accompanied by an evaluation which does not bind CNES ;
- Statement of the accrued charges to be paid to the Contractor.

They may also request a statement of advances and progress payments that have been made. The person responsible for providing this information shall be specified in the Contract.

The same recipients may also request the accounts manager to provide a detailed statement concerning stop payment requests received by CNES concerning accounts receivable retained by the Contractor. If the request is made by registered letter with acknowledgement of receipt, with appropriate justification, CNES shall be obliged to notify them, and the Contractor, of any amendments made to the Contract having effect on the assignment or the pledge.

They may not request any further information, other than that specified above, nor may they interfere in any manner in the execution of the Contract.

## **ARTICLE 16. SUBCONTRACTING**

The Contractor may subcontract the execution of certain parts of its Contract under the condition of having obtained acceptance from CNES of each subcontractor and approval of its terms of payment. In the case of subcontracting, the Contractor remains personally responsible for the execution of all obligations arising out of the Contract. The Contractor takes the necessary steps to provide CNES as quickly as possible with the documents required for payment of its subcontractors.

Acceptance of the subcontractor and agreement to the terms of payment shall be in accordance with the provisions in Articles R 2193-1 to R 2193-10 of the French Public Procurement Code.

## **CHAPTER III – EXECUTION OF THE SERVICE**

### **ARTICLE 17. EXECUTION DEADLINES**

Apart from the deferment case provided for in the CCAG applicable to the Contract, the Contractor may request a deferment of delivery or execution.

This request shall be sent to the address mentioned in the Contract, within a maximum period of twenty (20) days of the occurrence of the event justifying the request. To be admissible, the request must not put forward an event that occurred subsequent to the contractual delivery or execution date.

CNES has a period of twenty (20) days to inform the Contractor of its decision. The decision of CNES is notified in a letter serving as a routine order. If no decision is given by CNES, the extension of the execution deadline is considered to be refused.

### **ARTICLE 18. PENALTIES**

The provisions set out in Articles 14.1 of the CCAG-TIC, FCS and PI; Article 15 of the CCAG-MI and Article 19.2 of the CCAG Works and Article 16.2 of the CCAG-MOE shall apply with the following stipulations:

Where no provision is made in the Contract :

- The amount subject to a penalty is the Contract amount before VAT ;
- The total amount of penalties for delay is limited to 20% of the Contract amount before VAT.

Penalties for delay shall apply without the issuing of any prior formal notice to the Contractor.

### **ARTICLE 19. SUSTAINABLE DEVELOPMENT**

The provisions set out in Articles 16 of the CCAG-TIC, FCS and PI; Article 17 of the CCAG-MI and Article 20.2 of the CCAG Works and Article 18.2 of the CCAG-MOE are completed as follows :

The Contractor undertakes to implement the environmental protection measures adapted to its activity which are mentioned in the Contract and, specifically, in the technical requirements.

CNES shall be entitled, at any time during the execution of the Contract and during the period of guarantee for the services delivered and / or executed, to verify the proof that these services comply with the legal, regulatory and contractual environmental requirements.

The Contractor shall provide to the CNES technical manager designated in the Contract, the contact information of the person(s) responsible for ensuring that legal and regulatory provisions and requirements in terms of the environment, health and safety of individuals and preservation of the surroundings are complied with by its organisation, its subcontractors, if any, and for the site(s) concerned by the Contract.

## **ARTICLE 20. TECHNICAL DOCUMENTATION AND RESOURCES PROVIDED**

### **TO THE CONTRACTOR**

The technical documentation and resources provided to the Contractor by CNES are identified in the Contract.

## **ARTICLE 21. ADDITIONAL AND AMENDING SERVICES**

The provisions set out in Articles 23 of the CCAG-MI, PI and FCS; Article 14 of the CCAG-MOE; Article 25 of the CCAG-TIC and Article 13 of the CCAG Works are completed as follows:

The decision to take on additional and amending services is formalised by the issuing of a purchase order for the Contractor, as part of the purchase order-based work package provided for in the Contract.

If there is no purchase order-based work package or if the amount of the latter is exceeded or insufficient to cover the amount of the service, the additional or amending services shall be formalised through a Contract amendment.

Purchase orders are formalised according to the provisions set out below.

### **PRICE, COSTING DATA**

Before issuing any purchase order, the price and type of the amount of the Contractor's services are defined:

- either on the basis of a price schedule, containing the elements required to set the final prices, defined under the Contract;
- or on the basis of a technical and financial proposal following negotiations between CNES and the Contractor, in accordance with the provisions set out in the Contract.

### **CONDITIONS OF PAYMENT OF PURCHASE ORDERS**

The conditions of payment applicable to each purchase order are those defined in Article 12 of these CCAP, taking into account any clarifications made regarding the Contract.

Each purchase order defines, in particular, the term(s) of payment, the amount, the execution deadline, the technical description and the type (advance, progress payments, final partial payments and balance payments). It is specified that an advance may only be granted for a purchase order for an amount exceeding 50,000 euros, exclusive of taxes, with an execution period greater than six (6) months. All these items together constitute the payment schedule of the purchase order.

### **PENALTIES FOR DELAY APPLICABLE TO PURCHASE ORDERS**

Penalties for delay and conditions for extension or deferment of delivery or execution applicable to each purchase order are those defined in the CCAG applicable to the Contract, taking into account any clarifications made regarding the Contract.

## **ISSUANCE**

By way of derogation from Article 3.7 of the CCAG in question, purchase orders shall not be subject to notification.

By express agreement, dispatch of a purchase order (cf. Article 1.1 of the CCAP) shall enforce the undertaking of the Contractor, who nevertheless, has a time-frame of ten (10) days from the date of dispatch to express its observations. After this period, the Contractor is deemed to have accepted and agreed to the purchase order.

In accordance with the provisions of this article, each purchase order shall specify at least :

- ✓ its subject, Contract (contract or framework agreement and purchase order) reference, order number, date of issue and, if applicable, details of the special technical specifications for its execution, which shall be appended to it ;
- ✓ price or type of the amount :
  - lump sum ;
  - or estimated amount with definition of all elements required to determine the final amount.
- ✓ the conditions of payment ;
- ✓ the deadlines and penalties for delays ;
- ✓ the nature and details of the services with the place and special conditions of execution, it being specified that the place of execution can be either :
  - the Contractor's premises and those of any subcontractor ;
  - the premises of CNES ;
  - as an exception, the premises of another technical centre run by CNES, if required by the specific conditions of execution of the service ;
- ✓ details of the supplies (materials, software and/or documents with, in particular, their number and format to be supplied).

## **EXECUTION OF PURCHASE ORDERS**

By way of derogation from Article 13.1.2 of the CCAG-FCS, PI and TIC, Article 15.1.2 of the CCAG-MOE and Article 14.1.1. of the CCAG-MI, the execution deadline starts on the date of issue of the purchase order indicated on the latter.

All other terms pertaining to the execution of the services or supplies shall be specified, as required, in the purchase order or in the Contract to which it refers.

## **LAST DATE FOR ISSUANCE OF THE PURCHASE ORDERS**

The last date for issuance of the purchase orders is the Contract end date, unless an exception is provided for in the Contract.

## **ARTICLE 22. TRIGGERING OF AN OPTIONAL TRANCHE**

If the Contract includes one or more optional tranches, they may be triggered by CNES under the following terms and conditions :

CNES reserves the possibility of ordering the services covered by each optional tranche, either in full or in part.

If it decides to order said services, the service order is notified to the Contractor by post, along with a related payment plan.

If not confirmed, CNES is not bound by any commitments regarding the execution of the services, and no forfeit shall be due to the Contractor.

## **ARTICLE 23. DELIVERY**

The provisions of Article 21 of the CCAG-TIC, PI, FCS; Article 30 of the CCAG-MI, are completed as follows :

Pursuant to the provisions of Articles R4515-1 et seq. of the French Labour Code, before any delivery of equipment or supplies or any transport of equipment or supplies, the Contractor shall prepare and submit to CNES a safety protocol for loading and unloading operations.

### **DELIVERY ON A CNES SITE**

The Contractor undertakes to deliver the equipment and supplies to the address mentioned in the Contract.

The Contractor shall provide a detailed evaluated inventory of the supplies and the equipment on delivery and hand-over to CNES.

The packaging and freight charges (inclusive of insurance) shall be included in the Contract prices.

The Contractor shall be responsible for all the handling and lifting equipment needed on site for proper execution of the work; their cost is included in the Contract prices.

Unless otherwise specified in the Contract, the equipment and supplies delivered to the Guiana Space Centre (GSC) are in suitable commercial packaging for transport and shall be transported under the responsibility of the Contractor and at its expense or that of its subcontractors, to the GSC technical centre in Delivery Duty Paid (DDP).

The Contractor shall be responsible for all the handling and lifting equipment needed on site for proper execution of the work; their cost is included in the Contract prices.

### **DELIVERY ON ANY SITE OTHER THAN A CNES SITE**

The Contractor undertakes to deliver the equipment and supplies to the address mentioned in the Contract.

The supplies and equipment, in suitable commercial packaging for transport, shall be transported under the responsibility of the Contractor and at its expense or that of its subcontractors, from the Contractor's workshops to the address mentioned in the specific contractual documents. For foreign sites, deliveries are made Delivery Duty Paid (DDP).

The Contractor shall provide a detailed evaluated inventory of the equipment, conforming to the model sent to the Contractor at its request, upon its delivery and it being put at the disposal of CNES.

The Contractor shall be in charge of the requests and relations required with the forwarding agent, especially to submit to it, on time, all documents explaining the condition of the supplies and the equipment expected by the customs administration.

## **SUBMISSION OF TECHNICAL DOCUMENTS**

All the technical documents (study reports, calculation notes, drawings, etc.) shall be sent to the Contract technical manager.

The terms and conditions for drawing up and sending these documents are specified in the Contract.

Where no provision is made in the Contract, the technical documents sent to CNES shall mention, as a minimum :

- the name of the Contractor ;
- a reference determined by the Contractor, the document version and date ;
- the assignment or project name if they are produced as part of an assignment or project;
- the reference of the Contract to which they relate.

The Contract specifies the media on which technical documents must be submitted (hard copy, USB flash drive, CD-ROM etc.) to facilitate classification and archiving. Where no provision is made in the Contract, the Contractor shall submit the technical documents in the form of a readily readable digital file sent to the technical manager designated in the Contract.

## **ARTICLE 24. VERIFICATION OPERATIONS**

For the purposes of application of the provisions in Articles 27 and 28 of the CCAG-FCS, Articles 30, 31 and 32 of the CCAG-TIC, Article 28 of the CCAG-PI, Articles 32 and 33 of the CCAG-MI, Article 20 of the CCAG-MOE and Article 41 of the CCAG-Works, the following precisions are added.

CNES uses various methods specified in the technical specifications to verify proper execution of the Contractor's services.

## **ARTICLE 25. ADMISSION, ADJOURNMENT, REDUCTIONS AND REJECTION**

### **ADMISSION DEADLINE FOR THE EQUIPMENT OR SUPPLIES DELIVERED**

By way of derogation from Article 29.1 of the CCAG-PI, Article 30.1 of the CCAG-FCS, and Article 34.1 of the CCAG-TIC and the CCAG-MI, the admission deadline under the provisions is forty-five (45) days, unless otherwise specified.

## CHAPTER IV – INTELLECTUAL PROPERTY

The provisions concerning intellectual property, provided for in Chapter 6 of the CCAG-PI, FCS, MI and TIC shall be replaced by the following provisions.

### ARTICLE 26. DEFINITIONS

- a) "Results" means all elements of any nature, form or medium produced as a result of the execution of the services covered by the Contract. This includes in particular distinctive signs, domain names, information, websites, reports, studies, trademarks, designs or models, algorithms and more generally, all elements whether or not they are protected by intellectual property rights (copyright and related rights) or any other system of protection, such as know-how, business confidentiality, or image rights for goods or individuals, and databases.

Software and Patents are not considered as Results and are subject to specific treatment.

- b) "Software" means a piece of work composed of a set of programs, processes and rules pertaining to the operation of a data processing system, along with its associated documentation whether in written or any other form that can be read by humans or machines. When used alone in this document, the term Software refers indifferently to Specific Software or Existing Software or Modified Existing Software or Standard Software or Freeware.
- c) "Existing Software" means Software, the intellectual property rights to which are held by either the Contractor or CNES, independently of the Contract, which is necessary for the development and/or use of the Specific Software and supplied to CNES under the Contract and that the Contractor or CNES declares as being Existing Software.
- Existing Software that is adapted without creating any additional functionality remains Existing Software.
- d) "Modified Existing Software" means Existing Software on which the Contractor has performed work under the Contract that results in the creation of a functionality, and that the Contractor or CNES has declared as being Modified Existing Software.
- e) "Standard Software" means Software designed by a publisher (one of the Parties or a third party) to be delivered to one or more users with a view to executing the same function. This software may be COTS (commercial off-the-shelf), Freeware or Shareware.
- f) "Freeware (Free or Open Source Code)" means Software for which the licence allows for redistribution and access to the Source Code and derived works.
- g) "Specific Software" means software specially developed by the Contractor under the Contract and identified as being deliverable under the terms of said Contract. It may be an original creation from scratch or Modified Existing Software.

It is agreed that, in general, Specific Software includes elements including, without being limited to, all types of media, programs, manuscripts, lists and other programming documents produced for CNES by the Contractor, which are identified as being deliverable under the terms of the contract.

- h) “Third-Party Application Maintenance” (TPAM) means the services that consist in keeping a computer program in a state that allows it to fulfil its function. This operational maintenance operations are executed for preventive or corrective purposes. They may also include software upgrade services.
- i) The term “Patent” refers to industrial property titles and title applications relating to inventions resulting from the activities performed under the Contract, such as patents, patent applications, certificates of utility, additional protection certificates, and titles or title applications issued abroad or under international agreements, conventions and treaties.
- j) Prior Knowledge refers to all elements, regardless of their form, nature and medium, which are provided to meet CNES’ needs in the context of an intellectual service, whether incorporated in the Results or not. This Prior Knowledge either belongs to CNES, the Contractor or to third parties, or are licensed to them, but have been produced outside the scope of the Contract. In particular, this includes: intellectual works (including software, whether or not provided under a standard licence, and their documentation); databases; trademarks; domain names and other distinctive signs; drawings or models; inventions that are patentable or not within the meaning of the French Intellectual Property Code; data and information, including content that is offered under a standard licence; and more generally all elements that are protected by intellectual property rights or by any other means of protection, such as know-how, business secrets, image or voice rights for individuals or image rights for goods.
- k) The needs stemming from the purpose of the Contract refer to all the missions of CNES, such as they are defined in Article L331-2 of the French Code of Research.

## **ARTICLE 27. PROVISIONS PERTAINING TO SOFTWARE**

The provisions below define the Parties' rights to the Software delivered to CNES according to their status. The Contract defines the list of Software that are delivered to CNES as well as the status applicable to them according to the following provisions.

### **27.1. SPECIFIC SOFTWARE STATUSES**

The status applicable to the Software is defined according to the various cases specified below. The Contract expressly specifies the statuses applicable to the Software delivered. It defines whether the subject of said Contract mainly concerns the delivery :

- of Software per se ;
- of a system or a product containing Software.

► In the first case (Software per se), Broad Licence status (Status 2) is the applicable status on principle.

As an exception to this principle, Transfer status (Status 3) can be requested by CNES in the competitive tender file, in the case of a strategic need or to meet legal requirements regarding space operations.

► In the second case (a system or product containing Software), Restricted Licence status (Status 1) is the applicable status on principle.

As an exception to this principle, Broad Licence status (Status 2) can be requested by CNES for certain software components previously identified by CNES in the competitive tender file.

For the ground segment, Contracts generally concern the delivery of Software provided per se.

For the space segment, Contracts generally concern the delivery of a system (launchers, satellites, platforms, payloads) or product (equipment).

For studies including the delivery of Software, the choice of applicable status is made on a case-by-case basis.

### 27.1.1. RESTRICTED LICENCE STATUS

**a)** For Specific Software, the Contractor continues to own all the copyrights granted by law.

In the event of the disclosure, publication or marketing of the Specific Software, the Contractor agrees to mention CNES financing.

For any direct or indirect commercial use of the Specific Software, the Contractor agrees to draw up a special agreement with CNES that shall, in particular, define the amount of the royalties and their conditions of application.

**b)** For the needs arising from the subject of the Contract, and under the conditions specified therein, the Contractor grants a non-exclusive licence for the use and duplication of the Specific Software to CNES. With the exception of special cases arising from the Contract, this licence is valid in European Union member states and the European Space Agency for the legal term of copyright protection.

The full and entire exercise of the rights thus granted requires the Contractor to deliver the Specific Software to CNES in an executable form with the user documentation defined in the Contract.

If CNES asks for the Source Code and its documentation to be supplied for inspection, analysis or backup (safety of individuals and property) in order to meet the needs arising from the Contract, then the Contractor agrees to deliver it to CNES. The conditions of delivery and non-disclosure applying to the supply of the Source Code and the documentation are defined in the Contract. CNES agrees to destroy the elements supplied at the end of the said operations.

For the needs arising from the subject of the Contract, CNES is entitled to sub-license the right to use the Specific Software, it being understood that only the executable Code of said Software can be distributed in this case, and that this sub-licence cannot be transferred. CNES agrees to send to the Contractor the list of third parties benefiting from the sub-licence to execute.

If CNES wishes to disclose the Source Code of the Specific Software to a third party, it must obtain the prior written consent of the Contractor and oblige said third party to respect the confidential nature of said Source Code of the Specific Software. The Contractor shall send a reasoned answer within forty-five (45) working days of the receipt of the request by the Contractor. CNES shall take all necessary measures with the third parties to protect the rights of the Contractor.

The amount corresponding to the licensing of the above-mentioned rights is included in the amount of the Contract.

If the Specific Software is protected by the registration of a trademark or a domain name by the Contractor, then the latter shall refrain from opposing the use of this trademark or domain name by CNES, when CNES uses the Specific Software under the conditions defined herein.

**c)** By way of derogation from the above, and for the sole purposes of TPAM, the Contractor grants a right to CNES including the right to sub-license, use, modify, adapt and correct the Specific Software in the member states of the European Union and the European Space Agency.

In this case, CNES agrees to protect the confidential nature of the Source Code during the tender process for the award of the TPAM Contract and to require that third parties sign a non-disclosure agreement before accessing the source on CNES premises in order to prepare their bid.

CNES agrees to grant limited access to the Source Code by the selected Contractor, and only for the purposes of the TPAM. The conditions of this section c) only apply to software related to the ground segment.

### **27.1.2. BROAD LICENCE STATUS**

**a)** For Specific Software, the Contractor continues to own all the copyrights granted by law.

In the event of the disclosure, publication or marketing of the Specific Software, the Contractor agrees to mention CNES financing.

For any commercial use of the Specific Software, the Contractor agrees to draw up a special agreement with CNES that shall, in particular, define the amount of the royalties and their conditions of application.

**b)** In order to meet the needs arising from the subject of the Contract, and according to the conditions of the Contract, for each Specific Software, the Contractor grants a non-exclusive licence for use for the entire legal term of the protection of the copyrights worldwide, which covers all the rights listed below :

- the right to reproduce, in unlimited numbers, all or part of the Specific Software, by any means or processes, on any current or future, known or unknown, media, and in particular on hard copy, digital, electronic or computer media, by downloading, media exchanges or network transfers ;
- the right to represent the Specific Software by any current or future, known or unknown means of distribution and communication ;
- the right to translate all or part of the Specific Software into any language and any programming language, and to reproduce the resulting documents on any current or future, known or unknown media or hardware ;
- the right to arrange, adapt or make any other changes to the Specific Software supplied and the right to reproduce the resulting Software ;
- the right to grant all or part of these rights with the right to sub-license to third parties in order to meet the needs arising from the subject of the contract. At the Contractor's request, CNES shall inform the Contractor of any software sub-licences granted to third parties.

The amount corresponding to the licensing of the above-mentioned rights is included in the amount of the Contract.

CNES shall take all necessary measures to protect the rights of the Contractor.

The implementation of the above-mentioned rights requires the Contractor to deliver the Source Code and the Object Code of the Specific Software to CNES, along with all the documentation specified in the Contract. This delivery shall be made according to the conditions specified in the Contract.

If the Specific Software is protected by the registration of a trademark or a domain name by the Contractor, then the latter shall refrain from opposing the use of this trademark or domain name by CNES, when CNES uses the Specific Software under the conditions defined herein.

### **27.1.3. TRANSFER STATUS**

The Contractor transfers exclusively to CNES all the patrimonial copyrights of the Specific Software, for the legal term of the copyrights and on a world-wide basis.

In application of the requirements of Article L. 131-3 of the French Intellectual Property Code, the transferred rights shall include :

- the right to reproduce or to have reproduced, in unlimited numbers, all or part of the Specific Software, by any means or processes, on any current or future, known or unknown, media, and in particular on hard copy, digital, electronic or computer media, by downloading, media exchanges or network transfers ;
- the right to represent, or to have represented, the Specific Software by any current or future, known or unknown means of distribution and communication ;
- the right to translate, or to have translated, all or part of the Specific Software into any language and any programming language, and to reproduce the resulting documents on any current or future, known or unknown media or hardware ;
- the right to arrange, adapt or make any other changes to the Specific Software supplied and the right to reproduce the resulting Software ;
- the right to distribute and sub-license the Specific Software by any means ;
- the right to freely use the Specific Software ;
- and the right to proceed with any formalities in its own name with a view to obtaining and conserving the transferred rights.

The implementation of the above-mentioned rights requires the Contractor to deliver the Source Code and the Object Code of the Specific Software to CNES, along with all the documentation specified in the Contract. This delivery shall be made according to the terms specified in the Contract.

The price of the transfer of rights is included in the amount of the Contract.

The Contractor further agrees not to publish, reproduce, adapt or otherwise use or market the Specific Software and elements whose rights are assigned to CNES.

The Contractor agrees to refrain from imposing a trade mark or domain name on the Specific Software transferred to CNES.

It is understood that the Contractor can ask CNES for the licensing of intellectual property rights in its favour, which are covered by the conditions of a specific agreement. CNES shall send a reasoned answer within forty-five (45) working days of the receipt of the request by the Contractor. Otherwise, CNES is deemed to be in agreement.

## 27.2 EXISTING SOFTWARE

Signing of the Contract does not transfer intellectual property rights or rights of any kind relating to Existing Software, except in the following specific cases. CNES, the Contractor and any third parties designated in the contract shall each continue to own the intellectual property rights or the rights of any kind relating to Existing Software.

The intellectual property rights relating to Existing Software are transferred from the Contractor to CNES only for the use of the Specific Software and are defined on a case-by-case basis.

Therefore, in the course of execution of the Contract, the Contractor shall not use or incorporate, without the prior consent of CNES, any Existing Software that may limit or increase the cost of exercise of the rights covering the Software for CNES.

The price of licensing to CNES the rights to Existing Software is included in the Contract price.

## 27.3 STANDARD SOFTWARE

The intellectual property rights in the licence contracts of the Standard Software are granted to CNES with the guarantees in the licence contracts of said Standard Software.

In the course of the execution of the deliverables, the Contractor shall not use or incorporate, without the prior consent of CNES, any Standard Software required to execute the deliverables that may limit or increase the cost of the exercise of the rights covering the Software by CNES.

Signing of the Contract does not transfer intellectual property rights or rights of any kind relating to Standard Software. CNES, the Contractor and any third parties designated in the Contract shall each continue to own the intellectual property rights or the rights of any kind relating to Standard Software.

In the event of contradiction between these conditions and said licences, the latter shall take precedence over these conditions.

## 27.4 FREeware

For all the Freeware or shareware supplied under the terms of the Contract, CNES shall benefit from the rights granted under the distribution licence of each said Software, along with any warranties, where appropriate.

In the course of the execution of the deliverables, the Contractor shall not use or incorporate, without the prior consent of CNES, any Freeware or shareware required to execute the deliverables that may limit or increase the cost of the exercise of the rights covering the Software for CNES.

The Parties agree that no intellectual property rights shall be transferred for Freeware and shareware from one Party in favour of the other, under the terms of the Contract.

In the event of contradiction between the terms of these conditions and said licences, the latter shall take precedence over these conditions.

## 27.5 STANDARD CLAUSES APPLICABLE TO SPECIFIC AND EXISTING SOFTWARE

### 27.5.1 GUARANTEE OF RIGHTS

- a) The Contractor guarantees CNES full enjoyment, free of any servitude, of the rights transferred and/or granted relating to Specific and/or Existing Software supplied at the end of the Contract, subject to the following arrangements :

If all or part of Specific and/or Existing Software supplied to CNES is acknowledged by the Contractor to be likely to constitute a case of patent infringement with regard to a third party or a violation of any other intellectual property rights, unfair competition or free riding, then the Contractor agrees, either :

- (1) to obtain for CNES the right to continue to use the supplied Specific and/or Existing Software, in accordance with the conditions of the Contract, and without any limitations or additional costs for CNES, or ;
- (2) to replace or modify the supplied Specific and/or Existing Software, such that it no longer constitutes a case of patent infringement or is likely to do so.

Moreover, if a court of law definitively decrees that all or part of the Specific and/or Existing Software supplied to CNES constitutes patent infringement or any other violation of intellectual property law, unfair competition or free riding, then the Contractor agrees to settle any costs and expenses resulting from this decision, in accordance with the provisions in this article.

Notwithstanding the above, it is agreed that this guarantee also applies to Freeware incorporated, without the prior consent of CNES, into Specific Software supplied under the terms of the Contract.

- b) The obligations of this article shall apply, provided that CNES :

- informs the Contractor in writing as quickly as possible of any claims that it receives,
- allows the Contractor to take complete control of the defence, the strategy and the settlement of the claim, if the licence statuses in the Contract are applied,
- provides the Contractor with all necessary information and assistance, at the Contractor's expense ; and
- does not conclude any transaction or settle amicably said claim.

- c) However, the Contractor is not liable for any allegations concerning :

- Any element of any nature supplied by CNES and/or the third parties designated in the Contract ;
- The elements incorporated into the Specific and/or Existing Software at the express request of CNES and/or of the third parties designated in the Contract; and without the prior consent of the Contractor for this incorporation into the Specific and/or Existing Software ;
- Modifications or adaptations made to the Specific and/or Existing Software at the express request of CNES, by a third party and without the prior consent of the Contractor ;

- Use of the Specific and/or Existing Software other than the use for which the Specific and/or Existing Software was supplied under the terms of the Contract.
- d) The guarantee against claims from third parties relating to the exercising of their rights to the Software supplied under the terms of the Contract is limited to the amount, exclusive of VAT of the latter, unless a different amount is specified in the Contract.

This amount shall correspond to all the definitive compensation for the damage caused on this account.

However, this limit shall not apply to Freeware incorporated into Specific Software without the authorisation of CNES.

### 27.5.2 SOFTWARE INVENTORY

The final version of the inventory of the Specific and/or Existing and/or Standard Software and/or freeware and/or shareware supplied must be provided by the Contractor at the end of the Contract.

### 27.5.3 ESCROW CLAUSE

The Contractor agrees to preserve the rights of CNES if the copyright and property rights holder or their representative ceases operations or stops the maintenance of the Software. To this end, and at the request of CNES due to a risk of liquidation, the Contractor shall deposit the Source Code of the Existing or Specific Software in CNES' favour, with an accredited third party (APP, notary, bailiff, etc.). CNES shall receive a copy of the escrow agreement. This measure shall only apply if the Source Code has not been supplied to CNES.

Any escrow procedure shall not call into question the rights of CNES to the Specific and/or Existing Software under the terms of the Contract.

## ARTICLE 28. PROVISIONS PERTAINING TO PATENTS

### 28.1 PROVISIONS APPLICABLE TO INVENTIONS RESULTING FROM R&T CONTRACTS, PHASE 0 AND A, AND APPLICABLE TO B PHASES IN THE CASE THAT THE LATTER ARE COMPRISED PARTLY OF UPSTREAM RESEARCH AND DESIGN.

The provisions of this Article apply to Patents :

- Resulting solely from upstream research and design phases: R&T phases, 0 phases and A phases (limited to the feasibility studies and the exploratory phases) financed or co-financed by CNES with MANUFACTURERS ;
- Resulting from B phases under the assumption that they form a part of the upstream research and design; specific analysis must be conducted on the work packages in question ;
- Resulting from contracts covering the production of demonstrators, under the assumption that they are comprised partly of R&D; specific analysis must be conducted on the work packages in question.

## **CO-OWNERSHIP PRINCIPLE**

Unless otherwise decided by the Parties, Patents are filed in the form of a co-ownership with equal shares between CNES and the Contractor.

If the Parties reach different decisions, they shall define their share of ownership, taking into account their respective contributions: inventive contributions and other types of contributions (financial, prior knowledge, resources, etc.). They shall share Patent fees on this same basis. With respect to this last point, the co-owner Parties must reach an agreement before filing the Patent and within a reasonable period of time that is not detrimental to the protection of the invention concerned by Patent filing.

## **CO-OWNERSHIP RULES**

The conditions applicable to co-ownership of the Patent(s) between the Contractor and CNES are defined in the standard co-ownership rules set out in Appendix 1 of these CCAP.

## **SUBCONTRACTORS**

In the case of a Patent that results from a subcontract entered into by the Contractor, CNES waives the principle of co-ownership, it being understood that the Contractor agrees to preserve the rights acquired by CNES under Articles 5, 7 and 8 of the appended Co-Ownership Rules. However, in the case where a CNES employee is the inventor, the principle of co-ownership as provided for by the above provisions remains applicable.

## **28.2 PROVISIONS APPLICABLE TO INVENTIONS RESULTING FROM CONTRACTS OTHER THAN THOSE DEFINED IN ARTICLE 28.1**

Inventions resulting from contracts other than those defined in Article 28.1 are subject to the following principle:

### **FILING OF PATENTS FOR THE RESULTS BY THE CONTRACTOR**

Protecting Results through a Patent is incumbent on the Contractor. Costs relating to the filing, registration, maintenance and defence of industrial property titles are also incumbent on the Contractor.

The Contractor is obligated to provide CNES and the third parties designated in the Contract with a copy of the applications for titles of protection that it files in France, within two months of the date of their filing. The Contractor is obligated to inform CNES and the third parties designated in the Contract of responses to the applications for titles of protection it files, and of any act or event liable to affect their scope.

If, during the period between the first RFP in writing by CNES and the notification of award of Contract, the Contractor filed applications for titles of protection relating directly to the purpose of the Contract, it must provide a copy to CNES and to the third parties designated in the Contract within two months of the notification of award of Contract.

If CNES considers, unlike the Contractor, that certain Results are worth protecting, it may request that the Contractor file an application within a specified deadline. If the Contractor does not file the application within the specified deadline, CNES may file the application, in its own name, after having informed the Contractor, unless a substantiated decision is provided by the Contractor.

If the Contractor wishes to cease maintenance of one of its Patents, abandon it or withdraw an application, it must first inform CNES and the third parties designated in the Contract and, on its request, transfer its rights to the latter free of charge.

If no response is received within two months of having informed CNES, the Contractor may transfer its rights to a third party, provided that the latter agrees to guarantee the rights that CNES has under the Contract.

For a twenty-year period from acceptance of the services, the Contractor agrees to inform CNES and the third parties designated in the Contract of improvements made to the Patents, in particular, those subject to a title of protection, along with all related documentation.

## **PATENTS PROTECTED BY INDUSTRIAL PROPERTY RIGHTS**

The Contractor non-exclusively grants to CNES and the third parties designated in the Contract, a licence to use the industrial property rights to the Patents, for the purposes of this Contract, throughout the term of protection of the Patent.

The price of this licence is included in the Contract amount for titles or title applications that were filed after notification of award of Contract, and for those that were filed during the period between the first RFP in writing by CNES and notification of award of Contract.

The Contractor shall carry out all formalities required to make the patent licence effective against third parties in all the territories where rights are granted. The cost of these formalities is included in the amount of the Contract.

## **ARTICLE 29. PROVISIONS PERTAINING TO PRIOR KNOWLEDGE**

### **OWNERSHIP OF PRIOR KNOWLEDGE**

Signature of the Contract does not transfer intellectual property rights or rights of any kind pertaining to Prior Knowledge.

CNES and the Contractor remain the holders of their respective intellectual property rights or rights of any kind relating to Prior Knowledge. They retain their own rights relating to the Prior Knowledge incorporated in the Results.

With respect to the Prior Knowledge reported in the context of this Contract, the Contractor and CNES are responsible for obtaining the necessary rights from third parties to meet the obligations imposed by this article.

### **IDENTIFICATION OF PRIOR KNOWLEDGE**

The Prior Knowledge used in the framework of the Contract is identified in the appendix to the Contract, or in any event, as the Contract is executed, prior to any integration and/or use of any Prior Knowledge not provided for in the Contract. In the course of the performance of the Contract, the Contractor cannot use or incorporate, without CNES' prior permission, any prior knowledge required for the purposes of the Contract which may limit or make the exercise of the rights pertaining to the Results more expensive.

The Contractor specifies all the elements necessary for the use of prior knowledge by CNES.

Unless explicitly identified as Prior Knowledge, any element supplied when performing the Contract is deemed to be a Result. In this case, the Contractor may choose to replace the element concerned at its own expense so that it is compatible with the Results. The Contractor

is solely responsible for analysing and ensuring compliance with the legal framework of the prior knowledge it integrates as part of the Contract.

### **CNES RIGHT TO CONTRACTOR PRIOR KNOWLEDGE**

When the Contractor :

- incorporates Prior Knowledge in the Results ;
- provides Prior Knowledge as part of the execution of the Contract ;
- supplies Prior Knowledge which, without being incorporated into the Results, is strictly necessary for the implementation of the Results ;

it authorises CNES to use the Prior Knowledge for the same rights, duration and territory as those provided for in the framework applicable to the Results.

CNES is not authorised to use the Prior Knowledge independently of the use of the Results, unless it is placed under a framework of use that allows it.

When the framework applicable to Specific Software provides that CNES has the right to assign the Specific Software or to distribute it under a free licence, these rights do not apply to Prior Knowledge, unless otherwise stipulated in the Contract or if it is placed under a framework of use that allows it.

If a transfer of Results to CNES is provided for in the Contract, the transfer does not concern Prior Knowledge (unless expressly stipulated in the Contract documents). In this case, for the purposes resulting from the Contract, the Contractor grants CNES a non-exclusive licence to use its Prior Knowledge for the entire legal term of protection. This use is guaranteed worldwide and relates to the rights to reproduce, represent, translate, arrange, adapt, modify and sub-license all or part of the rights listed to third parties for the needs arising from the Contract.

### **CONTRACTOR RIGHT TO CNES PRIOR KNOWLEDGE**

The Contractor may only use CNES' Prior Knowledge to fulfil the Contract.

When the Contractor wants to incorporate CNES' Prior Knowledge in the Results or if it wants to use this Prior Knowledge, it shall request CNES approval. This Prior Knowledge will be strictly necessary for the implementation of the Results and shall not be incorporated in them.

If the Contractor so requests, CNES may grant it the same rights to its Prior Knowledge (incorporated in the Results or necessary for their implementation) as those provided for in the framework applicable to Results.

## **ARTICLE 30. PROVISIONS PERTAINING TO RESULTS**

The Contractor shall retain all the copyrights and property rights for the Results as conferred by law.

Unless specifically mentioned in the Contract, in the event of the disclosure, publication or marketing of the Results, the Contractor agrees to mention CNES financing.

Prior to any commercial use of the Results, the Contractor agrees to draw up a special agreement with CNES that shall, in particular, define the amount of the royalties and their conditions of application.

## **RIGHTS TO THE RESULTS GRANTED TO CNES**

For the needs arising from the subject of the Contract, the Contractor grants CNES and the third parties designated in the Contract a non-exclusive licence of use for the entire legal term of the protection of the copyrights worldwide. This covers all the rights listed below :

- the right to reproduce, in unlimited numbers, all or part of the Results, by any means or processes, on any current or future, known or unknown media or hardware, and in particular on hard copy, digital, electronic or computer media, by downloading, media exchanges or network transfers ;
- the right to represent the Results by any current or future, known or unknown means of distribution and communication ;
- the right to translate all or part of the Results into any language and any programming language, and reproduce the resulting documents on any current or future, known or unknown media or hardware ;
- the right to arrange, adapt or make any other changes to the Results supplied ;
- the right to grant all or part of the rights listed above with the right to sub-license the Results to third parties in order to meet the needs arising from the subject of the Contract.

The amount corresponding to the licensing of the above-mentioned rights is included in the amount of the Contract.

CNES shall take all necessary measures to protect the rights of the Contractor.

The Contractor shall not classify the Results as “industry confidential” or otherwise, which may be interpreted as limiting CNES’ rights without its consent.

The Contractor cannot assert its intellectual property rights/titles or rights of any other kind to oppose the use of the rights granted for the Results, as long as such use complies with the purposes of this Contract.

The Contractor authorises CNES to freely extract and reuse the databases included in the Results, in particular, to make public information available for reuse, free of charge or in return for payment.

If the Contract is terminated for any reason, CNES shall retain the rights applicable to the Contract.

The data integrated in or generated within the framework of the Contract are confidential and are the exclusive property of CNES. Without CNES’ prior and express authorisation, the Contractor shall refrain from making any direct or indirect use of these data that is outside the remit of the services for this Contract.

The Contractor guarantees CNES full enjoyment, without constraint, of the rights granted over the Results under the terms of the Contract. Failing that, it agrees to do one of the following (of its choosing): (i) modify or replace the elements that are the subject or at a serious risk of a dispute, so that they no longer fall within the scope of the complaint, while continuing to comply with the Contract specifications; or (ii) make arrangements so that the buyer can use the disputed elements without restriction and at no additional cost; or (iii) if neither of these solutions can be reasonably implemented, reimburse the buyer for the amounts paid with regard to the disputed elements and to compensate it for any damages incurred.

The Contractor shall bear the costs of all damages to which CNES, in the absence of any fault directly attributable to it, would be liable due to an act of patent infringement, unfair competition or free riding, as a result of the use of the Results.

## **ARTICLE 31. COMMERCIALISATION OF RESULTS FOR THE BENEFIT OF OTHER INDUSTRIAL SECTORS**

If provided for in the Contract, the Contractor undertakes to make every effort to commercialise the Results and know-how acquired during the execution of the Contract, in industrial sectors other than the aerospace sector.

It shall keep CNES informed of the actions carried out in this field.

If provided for in the Contract, the Contractor undertakes to send a commercialisation sheet in duplicate copies, one (the original) to the department mentioned on the sheet and the other (duplicate) to the commercialisation engineer mentioned in the Contract:

- A commercialisation sheet drafted according to the model attached to the Contract, every twelve (12) months unless the execution period is less than twenty-four (24) months, starting twelve (12) months after the notification.
- A summary sheet related to all the Results of the Contract at the end of the execution of the Contract, irrespective of the duration and drafted according to the model attached to the Contract.

If subcontracting is involved, the Contractor undertakes to draw up a separate sheet for each of the main industrial subcontractors (the sheet may be prepared and sent directly to CNES by the subcontractor in question) and a general sheet for all the other services.

If the Contractor has not obtained any positive results from the commercialisation actions (especially technology transfer) within a period of two (2) years after the date of termination of the Contract and if CNES feels that some transfers are worthy of being carried out, it can replace the Contractor as per the conditions laid down in the agreement between the two Parties. It is understood that no transfer of technology or know-how may be carried out without the formal consent of the Contractor.

The provisions of the Articles above shall also be applicable to subcontractors other than those whose service is limited to just supply.

## **CHAPTER V – SUMMARY LIST OF EXCEPTIONS TO THE CCAG**

Where no provision is made in the Contract, only the deviations or exceptions provided for below shall apply. Additional deviations are mentioned in a specific Article of the Contract which completes this Article.

### **EXCEPTIONS TO THE CCAG-FCS BY ARTICLES OF THE CCAP**

The CCAP clauses waive the following articles of the CCAG-FCS :

- 3.4.2 Notification of modifications concerning the legal or economic status of the Contractor
- 3.5 Group of economic operators
- 3.7 Purchase orders
- 4 Contractual documents
- 5.1.2 Confidentiality obligation
- 5.3 Security measures
- 6 Worker protection and working conditions
- 7 Protection of the environment, health and safety
- 13.1.2 Execution deadlines
- 14.1 Penalties
- 16.2 General environment clause
- 21 Delivery
- 23 Additional and amending services
- 27 Verification operations
- 28 Description of verification operations
- 30.1 Admission

It should be noted that the CCAP sets out significant exceptions with respect to Chapter 6 Intellectual Property of the CCAG-FCS.

### **EXCEPTIONS TO THE CCAG-TIC BY ARTICLES OF THE CCAP**

The clauses of the CCAP waive the following Articles of the CCAG-TIC:

- 3.4.2 Notification of modifications concerning the legal or economic status of the Contractor
- 3.5 Group of economic operators
- 3.7 Purchase orders
- 4 Contractual documents

- 5.1.2 Confidentiality obligation
- 5.3 Security measures
- 6 Worker protection and working conditions
- 7 Protection of the environment, health and safety
- 13.1.2 Execution deadlines
- 14.1 Penalties
- 16.2 General environment clause
- 21 Delivery
- 23 Additional and amending services
- 25 Verification operations - 30 Verification operations
- 31 Quantitative verifications
- 32 Qualitative verifications
- 34.1 Admission

It should be noted that the CCAP sets out significant exceptions with respect to Chapter 7 Use of the Results of the CCAG-TIC.

#### **EXCEPTIONS TO THE CCAG-PI BY ARTICLES OF THE CCAP**

The clauses of the CCAP waive the following Articles of the CCAG-PI :

- 3.4.2 Notification of modifications concerning the legal or economic status of the Contractor
- 3.5 Group of economic operators
- 3.7 Purchase orders
- 4 Contractual documents
- 5.1.2 Confidentiality obligation
- 5.3 Security measures
- 6 Worker protection and working conditions
- 7 Protection of the environment, health and safety
- 13.1.2 Execution deadlines
- 14.1 Penalties
- 16.2 General environment clause
- 21 Delivery
- 23 Additional and amending services
- 28 Verification operations
- 29.1 Admission

It should be noted that the CCAP sets out significant exceptions with respect to Chapter 6 Use of the Results of the CCAG-PI.

### **EXCEPTIONS TO THE CCAG-MI BY ARTICLES OF THE CCAP**

The clauses of the CCAP waive the following Articles of the CCAG-MI :

- 3.4.2 Notification of modifications concerning the legal or economic status of the Contractor
- 3.5 Group of economic operators
- 3.7 Purchase orders
- 4 Contractual documents
- 5.1.2 Confidentiality obligation
- 5.3 Security measures
- 6 Worker protection and working conditions
- 7 Protection of the environment, health and safety
- 14.1.1 Execution deadlines
- 15 Penalties
- 17.2 General environment clause
- 23 Additional and amending services
- 30 Delivery
- 32 Verification operations
- 33 Deadlines and report
- 34.1 Admission

It should be noted that the CCAP sets out significant exceptions with respect to Chapter 6 Use of the Results of the CCAG-MI.

### **EXCEPTIONS TO THE CCAG-WORKS BY ARTICLES OF THE CCAP**

The clauses of the CCAP waive the following Articles of the CCAG-Works :

- 3.4.2 Notification of modifications concerning the legal or economic status of the Contractor
- 3.5 Group of economic operators
- 3.7 Purchase orders
- 4 Contractual documents
- 5.1.2 Confidentiality obligation
- 5.3 Security measures
- 6 Worker protection and working conditions
- 7 Protection of the environment, health and safety

- 13 Conditions for setting the prices of additional and amending services
- 19.2 Penalties
- 20.2 General environment clause
- 41 Acceptance

It should be noted that the CCAP sets out significant exceptions with respect to Chapter 6 Intellectual Property of the CCAG-Works.

### **EXCEPTIONS TO THE CCAG-MOE BY ARTICLES OF THE CCAP**

The clauses of the CCAP waive the following Articles of the CCAG-MOE :

- 3.4.2 Notification of modifications concerning the legal or economic status of the Contractor
- 3.5 Group of economic operators
- 3.7 Purchase orders
- 4 Contractual documents
- 5.1.2 Confidentiality obligation
- 5.3 Security measures
- 6 Worker protection and working conditions
- 7 Protection of the environment, health and safety
- 14 Additional and amending services
- 16.2 Penalties
- 18.2 General environment clause
- 20 Verification operations

**CHAPTER VI - APPLICATION OF CHAPTER 9 OF THE CCAG-MI:  
SPECIAL PROVISIONS FOR REPAIR AND MODIFICATION  
CONTRACTS**

The provisions of chapter 9 are applicable to Contracts that refer to the CCAG-MI.

## **APPENDIX 1**

### **STANDARD CO-OWNERSHIP RULES APPLICABLE TO INVENTIONS RESULTING FROM SERVICES COVERED BY ARTICLE 28.1.**

BETWEEN

CENTRE NATIONAL D'ETUDES SPATIALES,

A Public, Industrial and Commercial, Scientific and Technical Institution (Établissement public, scientifique et technique à caractère industriel et commercial), with headquarters at 2, place Maurice Quentin - 75039 Paris Cedex 01, France, registered with the Paris trade and companies register under no. B 775 665 912,

(Hereinafter referred to as "CNES"),

ON THE ONE HAND, AND

NAME OF THE MANUFACTURER;

Information about the manufacturer (type, address, trade and companies registration no., etc.)

(Hereinafter referred to as the "MANUFACTURER"),

ON THE OTHER HAND,

CNES and the MANUFACTURER being referred to hereinafter collectively as the "PARTIES" or "CO-OWNERS" and individually as the "PARTY" or "CO-OWNER".

#### Article 1– DEFINITIONS

In these RULES, the term "day" means a calendar day and the following terms, when written in capitals, shall have the following meanings:

- "OWN PURPOSES of CNES": means CNES missions such as they are defined in the French Code of Research, unless a different definition is given for the commercial use of patents provided for in the CONTRACT from which the PATENT arose.
- "PATENT": means the industrial property titles defined in APPENDIX 2 and any extensions thereto.

- “CONTRACT”: any framework agreement, contract, agreement or other type of contract entered into between CNES and the MANUFACTURER.
- “EXCLUSIVE SECTOR”: sector of use reserved for the Manufacturer, to be defined by the PARTIES depending on the sector of activity of each MANUFACTURER
  - Such as, for example, in the Aerospace, Aeronautics, Defence and Security sectors,*
    - *Launchers,*
    - *Satellites,*
    - *Engines,*
    - *Technologies,*
    - *Equipment,*
    - *Onboard systems,*
    - *Onboard/ground infrastructure,*
    - *Applications and Services.*
- “PATENT EXPENSES”: direct expenses incurred by the operations involved in preparing, filing, extending, studying, granting and maintaining the PATENT. PATENT EXPENSES do not include any subsequent expenses incurred as a result of patent infringement or invalidity proceedings, brought against or initiated by one of the CO-OWNERS in order to defend the PATENT, as these types of proceedings require decisions made on a case-by-case basis.
- “INVENTION” means the patentable result obtained as part of a CONTRACT for which the PARTIES obtain the granting of a PATENT.
- “ADMINISTRATOR” means the PARTY which is responsible for filing the PATENT application and carrying out administrative formalities, acting on behalf of the PARTIES.
- “INTELLECTUAL PROPERTY COMMITTEE” means the Intellectual Property Committee appointed by the ADMINISTRATOR in charge of preparing the PATENT applications as well as the procedures involved in managing and maintaining the PATENTS.
- “IMPROVEMENTS”: means any patentable improvement or addition relating to the INVENTION, provided that it is (i) developed or acquired by one or other of the CO-OWNERS or both CO-OWNERS, and (ii) is made up of a modification which cannot be implemented without contravening one of the claims of the PATENTS protecting the INVENTION.
- “RESEARCH AND DEVELOPMENT” or “R&D”: means all the activities relating to fundamental research, applied research and experimental development, including the making of technological demonstrators, and excluding the making and qualification of pre-production prototypes, tooling and industrial engineering, industrial design and manufacturing.
- “ROYALTIES”: means the royalties paid to one CO-OWNER by the other CO-OWNER, for use of the INVENTION, in accordance with Article 9 below.
- “AFFILIATED COMPANIES”: means any company, enterprise, partnership or other entity which, in deed or in law, is controlled by a CO-OWNER, controls a CO-OWNER or is under the control of any company, enterprise, partnership or other entity controlling the CO-OWNER. The term “control” means the fact of owning, either directly or indirectly, more than

fifty percent (50%) of the shares of a company conferring voting rights, or the fact of having decision-making powers, for as long as said control lasts.

#### Article 2– PURPOSE

The purpose of these RULES is to define the conditions applicable to co-ownership of PATENT(s) between the MANUFACTURER and CNES, the list and description of which are provided in APPENDIX 2.

#### Article 3– DISTRIBUTION OF RIGHTS

The co-ownership share of CNES and the MANUFACTURER, defined in APPENDIX 2, is determined as equal shares, unless decided otherwise by CNES or the co-owner MANUFACTURER which, in this case, agree their share before filing any application, taking into consideration their respective contributions: inventive contribution, various inputs (financial, previous knowledge, resources, etc.).

The PATENT EXPENSES are distributed according to the share determined in APPENDIX 2.

The rights, prerogatives, benefits and obligations, risks and costs resulting from the existence of the PATENT are shared in the proportions corresponding to the share determined in APPENDIX 2.

The respective financing shares of CNES and the MANUFACTURER with respect to the CONTRACT from which the PATENT arose are reiterated in APPENDIX 2.

#### Article 4 – MANAGEMENT OF PATENTS

The PARTIES agree to follow the operational mode defined in APPENDIX 1 of these RULES.

The ADMINISTRATOR is designated in APPENDIX 2.

The ADMINISTRATOR has full authority to register these RULES with the Register of Patents concerned.

The expenses arising from this registration shall be considered to be PATENT EXPENSES.

#### Article 5 - IMPROVEMENTS

The MANUFACTURER and CNES undertake to notify each other of any IMPROVEMENT made to the PATENTS.

#### Article 6 - PATENT INFRINGEMENT / UNFAIR COMPETITION

##### 6.1 Information

The CO-OWNERS mutually notify each other as soon as possible and consult each other with regard to the various actions to be taken concerning:

- Any act of patent infringement and/or unfair competition of a PATENT by a third party of which they become aware;
- Any legal action relating to ownership of the PATENTS;

- Any patent infringement and/or unfair competition claim or proceedings concerning the PATENTS brought against them.

The CO-OWNERS provide each other with all information at their disposal which may be of use in assessing the nature and magnitude of the claims. Moreover, they exchange the documents, powers and signatures necessary for the proceedings described below.

The CO-OWNERS undertake to provide each other with mutual assistance to defend the PATENTS which have been infringed by a third party or contested by a third party.

Each CO-OWNER waives its right to bring proceedings against the other concerning the consequences of proceedings, whether as plaintiff or defendant, initiated by or brought against the CO-OWNERS jointly.

## 6.2 Proceedings brought against a third party

If the CO-OWNERS decide that proceedings should be brought against a third party which has carried out an act of patent infringement and/or unfair competition, they determine whether such proceedings should be conducted jointly. The expenses are divided according to the co-ownership share, except in the event that one CO-OWNER decides not to participate in the proceedings, as provided for below.

- In the EXCLUSIVE SECTOR, the MANUFACTURER will coordinate the proceedings, in cooperation with and supported by CNES,
- For matters outside of the EXCLUSIVE SECTOR, CNES will coordinate the proceedings, in cooperation with and supported by the MANUFACTURER.

If one of the CO-OWNERS wishes to initiate proceedings and the other CO-OWNER does not, it shall be entitled to initiate proceedings alone and in its own name. Legal expenses are borne by the CO-OWNER concerned, and compensation, including any damages, belongs to it in full.

## 6.3 Proceedings initiated by a third party

If any patent infringement and/or unfair competition proceedings are brought against one of the CO-OWNERS and/or its licence holders and/or customers by a third party, the payment of ROYALTIES by the CO-OWNER concerned to the other will be suspended and paid into an account held in trust by a neutral agent, from the date of notification of the proceedings and until a final court decision or settlement is made with this third party.

The ROYALTIES paid into an account held in trust are transferred to the CO-OWNER which was not concerned by the proceedings if the proceedings initiated by the third party fail, minus the expenses incurred for its defence by the CO-OWNER owing the ROYALTIES, or kept by the CO-OWNER which was not concerned by the proceedings if the CO-OWNER owing the ROYALTIES is found guilty (for a pro rata amount based on the share of the CO-OWNER to which the ROYALTIES are owed).

The CO-OWNER concerned by the proceedings keeps the other CO-OWNER informed of the outcome of the legal proceedings. If one of the CO-OWNERS is found guilty of patent infringement and/or unfair competition, the other CO-OWNER undertakes to refrain from using the PATENT within its sector of use, unless it obtains a licence from the third party which initiated the proceedings leading to a guilty verdict.

## Article 7 – RIGHT OF CNES TO USE THE PATENTS IN THE SPACE SECTOR FOR ITS OWN PURPOSES

### 7.1 Published PATENTS mentioning a CNES employee as inventor

CNES is free to use PATENTS that have been published and mention a CNES employee as inventor, in the space sector for its OWN PURPOSES, excluding any direct or indirect commercial use.

The term “right to use” means implementing the INVENTION covered by the PATENT.

CNES shall be entitled to grant a third-party manufacturer the right to use said PATENTS in order to carry out the RESEARCH AND DEVELOPMENT activities provided for under the contract notified by CNES to the aforementioned third-party manufacturer.

Upon termination of said contract, the third party shall not be entitled to use the PATENTS granted by CNES without the prior written consent of CNES. In return for the granting of this right to use the PATENTS, the third party grants CNES and the MANUFACTURER which co-owns the initial PATENT the right to use any IMPROVEMENTS arising from said contract.

## 7.2 Other PATENTS

CNES may use the PATENTS in the space sector for its OWN PURPOSES, excluding all direct or indirect commercial use.

If the PATENT has been published for over three (3) years and the MANUFACTURER does not commercially exploit the PATENT, CNES may allow a third-party manufacturer to use all or part of the PATENT for its OWN PURPOSES, having obtained prior written consent from the MANUFACTURER, which the latter cannot refuse if such use is proven to be in the general interest.

## Article 8 – COMMERCIAL USE OF THE PATENTS

By way of derogation from the provisions in Article L.613-29 paragraphs a) and c) of the French Intellectual Property Code, and as provided for in Article L.613-32 para. 2 of the aforementioned Code, commercial use of the PATENTS is subject to the terms and conditions described below.

### 8.1 Use in the EXCLUSIVE SECTOR BY THE MANUFACTURER AND ITS AFFILIATED COMPANIES

8.1.1 The MANUFACTURER and its AFFILIATED COMPANIES benefit from an exclusive right to use the PATENTS commercially, both directly and indirectly, in the EXCLUSIVE SECTOR of the MANUFACTURER, with the right to grant a sub-licence to any third party of their choosing within the EXCLUSIVE SECTOR of the MANUFACTURER, without any restriction, throughout the legal protection period of the PATENTS and in the countries in which it is a CO-OWNER. As a consequence of this exclusivity, CNES shall refrain from using the PATENTS, either directly or indirectly, within the EXCLUSIVE SECTOR expressly reserved for the MANUFACTURER, except in the conditions provided for in Article 8.1.3 below.

8.1.2 Within the EXCLUSIVE SECTOR of the MANUFACTURER, the MANUFACTURER and its AFFILIATED COMPANIES are authorised to negotiate, draft and sign, with third parties, (i) exclusive or non-exclusive licensing agreements for the PATENTS, with or without a sub-licensing clause, (ii) non-disclosure agreements for products involving the PATENTS or the know-how related to the PATENTS, it being specified, however, that prior to any signature of a licensing agreement for a PATENT, regardless of whether or not it contains a sub-licensing clause, the MANUFACTURER and its AFFILIATED COMPANIES undertake to notify CNES of the name of the licence holder and the scope of the rights granted. CNES undertakes to treat this information as confidential, in accordance with the provisions in Article 10.

8.1.3. The exclusive right to use the PATENT within the EXCLUSIVE SECTOR of the MANUFACTURER is lifted without prejudice to the rights to royalties and commercial use, if the following conditions are met:

- The PATENT has been published for more than three (3) years and;
- The MANUFACTURER has not exploited it commercially or undertaken any action with a view to exploiting it commercially in the future, and;
- CNES has obtained a commitment to exploit said PATENT from a third party. In this case, CNES shall obtain prior written authorisation from the MANUFACTURER, which shall only be entitled to refuse it if it can prove that this use runs contrary to its legitimate interests.

## 8.2 Use outside of the EXCLUSIVE SECTOR

For any commercial use of the PATENTS outside of the EXCLUSIVE SECTOR, the MANUFACTURER, CNES and their AFFILIATED COMPANIES shall be entitled to freely exploit the PATENTS, either directly or indirectly, by granting non-exclusive licences for commercial use the PATENT, with or without a sub-licensing clause.

The MANUFACTURER, CNES and their AFFILIATED COMPANIES are authorised to negotiate, draft and sign, with third parties, (i) non-exclusive licensing agreements for the PATENTS, with or without a sub-licensing clause, (ii) non-disclosure agreements for products involving the PATENTS or the know-how related to the PATENTS, it being specified, however, that prior to any signature of a licensing agreement for a PATENT, regardless of whether or not it contains a sub-licensing clause, each PARTY (and its AFFILIATED COMPANIES) undertakes to notify the other CO-OWNER PARTY of the name of the licence holder and the scope of the rights granted. The CO-OWNERS undertake to treat this information as confidential, in accordance with the provisions in Article 10 below.

If an exclusive licence is to be granted, the latter shall require prior consent from the other CO-OWNER. This CO-OWNER shall be required to explain its position, within sixty (60) days of the date on which it receives notification from the other CO-OWNER of its intention to grant an exclusive licence. If no answer is received within that period, the agreement of the CO-OWNER concerning the establishment of said licence is deemed to have been granted.

## Article 9 - ROYALTIES

If a CO-OWNER and/or its AFFILIATED COMPANIES use the PATENT directly or indirectly in accordance with Article 8 above, they are likely to owe the other CO-OWNER PARTY ROYALTIES according to the terms and conditions defined in this Article.

However, the CO-OWNER and/or its AFFILIATED COMPANIES shall not be required to pay ROYALTIES if the PATENT is used for activities which are funded by the French government, either directly or indirectly, via the rule of geographical distribution or fair return applied by the ESA.

The CO-OWNERS undertake to notify each other mutually before any marketing of a product or service within a reasonable time frame, so that they can discuss the Base for calculating the ROYALTIES.

ROYALTIES shall apply to each product or service sold.

The principles contained in this Article 9 shall apply mutatis mutandis in the case of (direct or indirect) commercial use of PATENTS by CNES.

## 9.1 Calculation of ROYALTIES

The amount of royalties is calculated using the following formula:

$A$  (Amount) =  $B$  (Base) x  $R$  (Rate). The Base for calculating the royalties:

- Is defined jointly by CNES and the co-owner MANUFACTURER if possible, prior to any use of the PATENTS;
- Incorporates the value of the patented part in the sale price of the product or service, multiplied by the weighting factor of the Inventive Contribution of CNES and the MANUFACTURER as follows:

Inventive Contribution of the PARTIES in the invention	Weighting factor of the Inventive Contribution
Inventors who are solely employees of CNES	1
At least 1 inventor employed by CNES and 1 inventor employed by the co-owner MANUFACTURER	0.75
Inventors who are solely employees of the co-owner MANUFACTURER	0.50

The Rate is set at 2%

## 9.2 Threshold amount of the ROYALTIES

The amount of royalties is limited to twice (2 times) the amount of the CNES contribution to the CONTRACT from which the INVENTION arose. In the event of a B phase or demonstrator, the upper limit is that of the work package(s) carried out under the CONTRACT from which the INVENTION arose.

9.3 It is understood that the sale of a product and/or supply of a service can only be deemed to have taken place if the MANUFACTURER has (i) delivered the product to its customer and (b) received full payment of the price of said product and/or service.

9.4 The name of the inventors and the parameters used to calculate the determinable royalties, for example the weighting factor of the inventive contribution and CNES' financing share of the CONTRACT from which the INVENTION arose, shall be determined as quickly as possible once a decision to file has been made. The final inventive contribution, the name and affiliation of the inventors and CNES' financing share of the CONTRACT are determined in APPENDIX 2.

## 9.5 Principles of non-cumulation

The PARTIES agree on the principle of non-cumulation of royalties between the commercial use of PATENTS or non-patentable Results applied to the same function for the same product or functional unit sold. Only the royalty of the highest amount shall be due to CNES.

However, if several PATENTS independent of one another applied to different functions are employed on different "products" or "services" or "functional units" belonging to a system with the same commercial use, royalties shall be cumulated.

The terms "product(s)" or "service(s)" or "functional unit(s)" shall be defined on a case-by-case basis between the PARTIES.

9.6 In certain special cases, for example if commercial use is no longer profitable, the CO-OWNERS may meet to discuss an adaptation of the terms of application of the royalty (e.g. an exemption or reduction).

9.7 ROYALTY rate if the PATENTS are used commercially via licences

If one CO-OWNER grants a licence to use a PATENT to a third party in accordance with Article 8 above, it shall be required to pay the other CO-OWNER a percentage of the annual revenue received for the granting of said licence, in line with its co-ownership share, minus the commercialisation costs (such as representation expenses with regard to the licence holder). 9.8 Invoicing and payment of ROYALTIES Invoicing:

For the MANUFACTURER : .... copy/copies of the invoices are drawn up and sent by, mentioning the reference of the RULES and the PATENT used, to CNES, for the attention of.

The CO-OWNERS undertake to send each other at the latest by 31 March of the following year, at the addresses provided in APPENDIX 1, the detailed statement of the pre-tax revenue generated and/or the royalties received as a result of commercial use of the PATENTS during the previous financial year, in accordance with Articles 8 and 9 above. Each CO-OWNER also establishes the pre-tax amount of the share owing to the other CO-OWNER, in application of the provisions set out in this Article 9.

The CO-OWNER shall send an invoice to the other CO-OWNER based on this statement.

Commercial uses of PATENTS that have not generated any revenue or ROYALTIES during the previous financial year shall be mentioned in the detailed statement.

Payment:

Invoices are payable within forty-five (45) days of the end of the month, from the date on which they are issued, and must clearly state that the payment determined by is made by .

Late payments shall lead to the application as of right of a default interest rate that is three times the current legal interest rate in France on the date when payment is due, calculated based on the amount of the overdue invoice, as of the day after the due date, until the date on which it is paid.

## Article 10 – CONFIDENTIALITY

The PARTIES undertake to refrain from any act which is likely to undermine the granting of the PATENT related to the INVENTION. To this end, the PARTIES undertake to keep the INVENTION strictly confidential, to take all necessary measures to ensure the confidentiality of the INVENTION and the related know-how. This commitment shall remain valid until publication of the first PATENT filed for the INVENTION.

Each PARTY undertakes to ensure that its inventors comply with this confidentiality obligation.

Each PARTY undertakes to treat as confidential the information it receives from the other PARTY under these RULES, regardless of the subject (technical, industrial, financial, commercial, etc.), type (know-how, method, process, technical and installation detail, etc.), medium (paper - written document or printout, digital, sample, drawing, model, etc.) and transmission mode (written, verbal, electronic, including over a network, etc.) (hereinafter referred to as "Confidential Information")

Confidential Information is identified as such by the PARTY that sends it via the apposition or addition on their medium of a stamp or wording, or by the presentation or sending of written notification for that purpose, or, if such information is disclosed during a visit or verbally, by written confirmation at the latest thirty (30) days after its disclosure.

Each PARTY undertakes, from the date on which these RULES come into force and for a period of ten (10) years after their expiry or termination for any reason whatsoever, to:

- a) Not use the Confidential Information for any purpose other than for the requirements of these RULES;
- b) Refrain from disclosing it to a third party in any way whatsoever, directly or indirectly, without the prior written consent of the providing PARTY, excluding AFFILIATED COMPANIES;
- c) Refrain from reproducing or copying it except in order to send it to members of its own staff who need to be aware of it for the purposes of these RULES, having informed them beforehand that said information is strictly confidential.

The term Confidential Information shall not apply if the receiving PARTY can prove that:

- a) Said information entered the public domain prior to its disclosure or after disclosure, but, in the latter case, only when the receiving PARTY is not at fault; or
- b) The information was already known to the receiving PARTY, as can be proven by certain documents in its possession; or
- c) The information was legally received from a third party, unrestrictedly and without infringing these RULES; or
- d) It was published without infringing the provisions of these RULES; or
- e) It is the result of internal developments engaged in good faith by the members of staff, who did not have access to the Confidential Information; or
- f) Its use or disclosure was authorised in writing by the providing PARTY.

The receiving PARTY undertakes to send said Confidential Information and copies thereof back to the providing PARTY or to destroy them immediately upon request. Independently of this request, each PARTY undertakes to destroy all Confidential Information and copies thereof which it has received from the other PARTY and which may still be in its possession when the RULES expire or are terminated.

#### Article 11 – DOMICILE / NOTIFICATIONS

For the purposes of these RULES, the PARTIES have elected domicile at their respective headquarters. Any change in address by either PARTY can only be enforced on the other PARTY after a period of fifteen (15) days as of the date on which notification thereof is received via a registered letter with acknowledgement of receipt.

Unless otherwise specified, the notifications provided for in application of these RULES shall only be deemed to have been validly delivered if they are sent by registered letter with acknowledgement of receipt to the PARTY concerned to the address specified below:

In the event that one of the PARTIES changes its address, said PARTY undertakes to notify the other PARTY of its new address. Until this change of address has been duly notified to the

other PARTY, any notification sent to the previous address is deemed to have been validly delivered.

If the notification is sent by registered letter with acknowledgement of receipt, the official date shall be that mentioned on the acknowledgement of receipt. If the notification sent by registered letter with acknowledgement of receipt to the official address of one PARTY is returned to the sender as being undelivered, the official date shall be that of the acknowledgement of non-receipt.

#### Article 12 - ENTRY INTO FORCE

These RULES will take effect from the date on which they are signed by the PARTIES, with retroactive effect as of .

These RULES will remain in effect throughout the life time of the PATENT(S) concerned.

The intellectual property rights acquired and granted under these RULES remain valid for the life time of the PATENT concerned or for the length of time for which they are granted, even if the RULES are terminated early, except in the event of termination for breach, as set out in Article 13.2 of these RULES.

#### Article 13 – TERMINATION

13.1 These RULES may be terminated at any time by joint agreement of the PARTIES.

13.2 These RULES may also be terminated as of right by one of the PARTIES if the other PARTY fails to fulfil one or more of the obligations by which it is bound under these RULES, without prejudice to any claims or right to compensation pertaining to the potentially wronged PARTY.

This termination shall only take effect two (2) months after receipt of a registered letter with acknowledgement of receipt by the PARTY deemed to have defaulted, unless, during that period, the defaulting PARTY fulfils its obligations or provides proof that it has been prevented from doing so due to a case of force majeure.

The exercising of this right to terminate the RULES does not exempt the defaulting PARTY from fulfilling the obligations to which it agreed prior to the effective termination date, for example payment of the sums required to maintain PATENTS which have already been filed, payment of ROYALTIES, unless it loses its rights pertaining to the PATENTS.

#### ARTICLE 14 – DISPUTES

The PARTIES undertake to seek an amicable settlement to any disagreement relating to these RULES which has been notified by the most diligent PARTY to the other PARTY. The disagreement is referred to the CEOs or Executive Management of the PARTIES. In the event of failure to reach an amicable settlement within two (2) months of the date on which the CEOs or Executive Management of the PARTIES meet up or attempt to meet up via an invitation duly notified by registered post with acknowledgement of receipt by the most diligent PARTY, the dispute shall be definitively settled by the competent legal authority.

Drawn up in Toulouse, in two (2) originals. Each PARTY declares that it has received one original.

On behalf of the

MANUFACTURER,

Name:

Title:

Date:

Signature:

On behalf of the CNES Chairman/CEO and

on its authority, Name:

Title:

Date:

Signature:

## APPENDIX 1 TO THE CO-OWNERSHIP RULES FOR PATENTS

### OPERATIONAL MODE

#### A - GENERAL PRINCIPLES

One of the PARTIES informs the other PARTY by email of its intention to file a PATENT application. The PARTY which suggests filing a PATENT shall provide the other PARTY with a description of the INVENTION and its context, sent by a secure means [registered letter with acknowledgement of receipt or secure line].

If the other PARTY (the MANUFACTURER or CNES) wishes to become CO-OWNER and replies favourably to the proposal within sixty (60) days from the date on which the description of the INVENTION is sent, the PATENT application is filed jointly, in accordance with the provisions set out in the RULES.

If for strategic reasons, one of the PARTIES does not wish to protect the INVENTION through a PATENT, it shall notify the other in writing. In this case, the PARTIES undertake to keep said INVENTION secret and to agree on the conditions of commercial use under the terms of a special agreement, in accordance with the principles set out in these RULES.

No response from the PARTY concerned within the time frame set out above shall be interpreted as a refusal to participate in the application. In this case, ownership is acquired solely by the PARTY which files the application in its own name and at its own expense, in accordance with the provisions set out in paragraph C below.

If the other PARTY replies positively to the proposal, the PATENT shall be subject to these RULES, it being understood that for PATENTS filed prior to signature of the RULES, the latter are listed in APPENDIX 2 and for PATENTS filed after signature of the RULES, APPENDIX 2 shall be amended accordingly.

If a positive response to the co-ownership proposal has been given, neither PARTY can then seek to oppose any direct commercial use of the INVENTION by the other PARTY based simply on the argument that APPENDIX 2 has not been amended. Neither PARTY is authorised to use the INVENTION indirectly before APPENDIX 2 has been amended.

PATENT management and tracking, from the filing date of the first PATENT application to their entry into the public domain, are entrusted to the co-ownership ADMINISTRATOR. In this respect, the co-ownership ADMINISTRATOR alone is empowered to act on behalf of the co-ownership for all actions mentioned below, in accordance with the information and notice procedures provided below. It assesses the need to obtain assistance from an INTELLECTUAL PROPERTY COMMITTEE to accomplish these actions, and it is free to select said committee.

The PARTY which suggested filing a PATENT is designated as the co-ownership ADMINISTRATOR for the application of these RULES, unless the PARTIES agree otherwise. The PARTIES undertake to:

- Communicate to each other all technical or administrative documents required to file and obtain PATENTS;
- Mention the names of the inventors in the PATENT applications, in accordance with the legal provisions in force;
- Ensure that their personnel, listed as inventors, provide all signatures, provide technical assistance and accomplish all formalities required to file, obtain, maintain and defend the

PATENTS, and in particular that they sign the assignment of rights relative to the U.S. procedure.

It is understood that the PARTIES will ensure the remuneration of their respective inventors, in accordance with legislation in force.

The PARTIES come together to decide on the management terms and conditions for any PATENT that may be classified by the Ministry of Defence so as to comply with the regulations in force relating to such classification.

## B - PATENT EXPENSES

PATENT EXPENSES, which have been accepted by the ADMINISTRATOR beforehand, are borne by the CO-OWNERS according to their respective co-ownership share of the PATENTS, in accordance with the provisions set out in Article 3 of the RULES and their APPENDIX 2, which is an integral part thereof.

The PATENT EXPENSES are paid upon direct presentation of the invoices sent by the INTELLECTUAL PROPERTY COMMITTEE to each of the CO-OWNERS. The ADMINISTRATOR ensures that the invoices are sent to each of the CO-OWNERS at the latest three (3) months after the operations carried out (filing, extension, etc.).

## C - PATENT FILING, EXTENSION AND MAINTENANCE PROCEDURES

### 1. PATENT filing

In France and abroad, PATENTS are filed in the joint names of CNES and the MANUFACTURER, except if one of the PARTIES decides not to participate.

The ADMINISTRATOR or the INTELLECTUAL PROPERTY COMMITTEE sends the draft text of the PATENT applications to the other CO-OWNER for an opinion. The other CO-OWNER has fifteen (15) days in which to send any comments to the ADMINISTRATOR and/or the INTELLECTUAL PROPERTY COMMITTEE. If no comments are received from the other CO-OWNER within this period, the draft PATENT applications as they were communicated by the ADMINISTRATOR shall be deemed to have been accepted.

### 2. PATENT extension

The ADMINISTRATOR informs the other CO-OWNER, as soon as possible, of its intention to request an extension of the PATENT(S) as well as the related terms and conditions (direct extension, PCT, choice of countries, etc.).

The possibility of filing a PATENT abroad is suggested by the ADMINISTRATOR to the other CO-OWNER ten (10) months at the latest after the initial filing date, or twenty-six (26) months in the case of a PCT.

In the case of an extension in Europe by the ADMINISTRATOR or a PCT application, the CO-OWNER shall be deemed to have agreed to the extension in accordance with Articles L.614-13 and L.614-14 of the French Intellectual Property Code. If the CO-OWNER refuses the extension, it assigns its co-ownership share of the French PATENT to the ADMINISTRATOR.

In other cases, the CO-OWNER has a maximum period of forty-five (45) days in which to notify the ADMINISTRATOR of its agreement to file in the countries suggested by the ADMINISTRATOR and of its decision to file an application in a country or countries not

mentioned by the ADMINISTRATOR. No response from the other CO-OWNER within this time frame shall be interpreted as agreement to the extensions suggested by the ADMINISTRATOR.

Only PATENTS filed in countries selected jointly by the CO-OWNERS shall be co-owned.

Other extensions shall be owned entirely by the PARTY which suggested them. The CO-OWNER which waives the extensions:

- Assigns, without receiving compensation and in an exclusive manner, its share of the right of priority concerning the related PATENT application for extension in the country or countries concerned to the other CO-OWNER, and will not bear the expenses related to the extension of said PATENT in the country or countries for which it waives its participation,
- Undertakes not to claim any payment of ROYALTIES for any direct and/or indirect commercial use of said PATENT in the country or countries concerned for which it waives its participation.
- Sends the assignment contract covering the rights for the country or countries concerned to the ADMINISTRATOR, within the time frame stipulated in the second part of this paragraph "PATENT extension".

### 3. PATENT maintenance

If one of the CO-OWNERS does not wish to maintain a PATENT in force, it notifies the other of its decision as soon as possible.

In this event, the PARTY which has decided not to maintain the PATENT assigns its co-ownership share of said PATENT to the other PARTY without receiving compensation. In this case, the expenses involved in any registration of the PATENTS concerned in the register(s) and in maintaining the PATENT shall be borne by the PARTY which takes over full ownership of the PATENT(S) concerned.

The PARTY which has decided not to maintain the PATENT:

- Also waives the ROYALTIES received by the other PARTY for direct and/or indirect commercial use of said PATENT, and is no longer bound by the obligation to participate in the administrative costs of said PATENT,
- Gives up its intellectual property rights for the PATENT concerned,
- Undertakes to provide the other PARTY with all the signatures and documents required to continue the procedure for maintaining the PATENT concerned.

### D – ANNUAL REPORTS

The PARTIES shall, without having to be requested to do so, before 31 March every year, send each other the annual report of the performance of this CONTRACT, which presents the status of all PATENTS, the current commercial uses and other uses as mentioned in Articles 7 and 8 of these RULES, the commercialisation actions taken, information concerning the royalties invoiced under Article 9.8 of these RULES.

## E – ASSIGNMENT

At any time, and according to the terms defined below, each CO-OWNER can assign its share of co-ownership of the PATENTS or PATENT applications. Any assignment shall cover the entire share.

The CO-OWNER wishing to assign its share of co-ownership to a third party notifies the other CO-OWNER in advance of its intention by registered letter with acknowledgement of receipt, specifying in particular the name of the third party and the financial terms of the assignment.

Within two (2) months following this notification, the other CO-OWNER has a pre-emptive right with financial terms at least equal to those granted to the third party. The other CO-OWNER states its intention to the assignor in writing. On expiration of the above-mentioned period, the assignor enjoys by right the authorisation to assign if the other CO-OWNER did not inform it of its wish to use its pre-emptive right.

In the case of an assignment of activity by the MANUFACTURER, especially if it includes assignment of its share to a third party, the PARTIES agree to meet as soon as possible to examine the waiver of the pre-emptive right of CNES in order not to hinder the assignment of activity operations.

However, the provisions relating to the pre-emptive right as provided for in this paragraph D do not apply in the case of an assignment by the MANUFACTURER of its share to one of its Affiliated Companies whose head office is in France.

In the assignment deed, the assignor makes known to the assignee, who accepts, the rights and obligations resulting from these RULES, and any ROYALTIES in case of commercial use. The assignee is subrogated in the rights and obligations of the assignor. A copy of the assignment deed is communicated to the other initial CO-OWNER. A copy of these RULES is sent to the assignee.

## F - CORRESPONDENCE

All correspondence between the PARTIES shall be addressed to:

For CNES:

Technical contact:

CENTRE NATIONAL D'ETUDES SPATIALES

BPi

18 avenue Edouard Belin

31401 TOULOUSE Cedex 9

Email

Contact for Commercialisation/Royalties:

CENTRE NATIONAL D'ETUDES SPATIALES

BPi

18 avenue Edouard Belin

31401 TOULOUSE Cedex 9

Email

Contact for contract management:

CENTRE NATIONAL D'ETUDES SPATIALES

BPi

18 avenue Edouard Belin

31401 TOULOUSE Cedex 9

Email

On behalf of the MANUFACTURER:

