

# ESA SPARK FUNDING CONTRACT

- DRAFT -

[Project Name]

Between:

cesah GmbH,  
(hereinafter called "cesah" or the "ESA TB Germany"),  
located at:

Robert Bosch Strasse 7,  
D 64293 Darmstadt,  
Germany,

Represented by Dr Andreas Kanstein, its Managing Director,

of the one part,

And:

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

Whose Registered Office is at: .....  
.....,  
.....

Whose Trade Register Number in ..... is: .....

Represented by Mr/Ms ....., its .....,  
(Name and function to be specified)

of the other part,

(together, hereinafter referred to as the "Parties" or individually as a "Party")

Commencement Date: .....  
Contract End Date: .....

the following has been agreed:

## **P R E A M B L E**

1. WHEREAS the European Space Agency (the Agency) is an intergovernmental organisation established by the Convention approved by the Conference of plenipotentiaries of its Member States on 30 May 1975 and which entered into force on 30 October 1980.
2. WHEREAS Article II of the Convention assigns to the Agency the task to promote cooperation in space research and technology and their space applications and to elaborate and implement activities and programmes in the space field.
3. WHEREAS the Agency manages a Spark funding initiative to accelerate the product development process of integrating a space technology. This tool is designed to allow a quick access for the Contractor and will be implemented by a member of the ESA Space Solutions Network (ESA Space Solutions Centre (ESA SSC), ESA Business Incubation Centre (ESA BIC), ESA Technology Broker (ESA TB), ESA Business Applications Ambassador (ESA AP)).
4. WHEREAS as part of the Downstream Business Applications Department the Agency has set up: the ESA Space Solutions Centre (ESA SSC) initiative which is a combination of an ESA Business Incubation Centre and either or both of an ESA Technology Broker and ESA Business Applications Ambassador; the ESA Business Incubation Centres (ESA BIC) initiative to enable space-related start-up companies to receive comprehensive commercial and technical assistance; the ESA Technology Broker (ESA TB) initiative to deliver business development support to enable the spin-off of space technologies; and the ESA Business Applications Ambassador (ESA AP) initiative to inform and support the utilisation of space assets by non-space industry and to generate deal-flow for the ESA Business Applications programmes.
5. WHEREAS the Agency has chosen to implement and manage the ESA Spark Funding Germany through the ESA TB Germany to the Contractor.
6. WHEREAS the ESA TB Germany and ESA Spark Funding Germany are funded by the European Space Agency.

## **DEFINITIONS**

For the purpose of this Contract the following words shall have the meanings assigned to them:

“Activity” means all the activities that the Contractor will undertake under this Contract in relation to its participation in the ESA Spark Funding Germany including the preparation of the Mid Term Report (if applicable), Final Report, and all other obligations and deliverables to be provided by the Contractor under this Contract.

“Contractor for the ESA Spark Funding” (referred to as “Contractor”) means the entity that benefits from the ESA Spark Funding Germany, paid by ESA TB Germany under this Contract.

“CCN” shall mean a contract change notice.

“Change Review Board” shall be a board consisting of a contractual and a technical representative of each Party established to discuss and agree upon the approval or rejection of a change proposal, and a final CCN.

“Commencement Date” shall mean the date that this Contract shall come into force, as set out in Article 4.

“Confidential Information” shall have the meaning set out in Article 8.2.

“Contract” shall mean an agreement between the ESA TB Germany and the Contractor regulating the Activity.

“Contract End Date” shall mean the date that this Contract shall come to an end, as set out in Article 4.

“Contract Term” shall be the period between the Commencement Date and the Contract End Date.

“Cost Report” shall mean a report detailing all costs incurred in relation to the Activity, to be submitted by the Contractor to the ESA TB Germany.

“Deliverables” shall have the meaning set out in Article 2.

“Disclosing Party” shall mean the Party disclosing Confidential Information.

“ESA TB Germany” shall have the meaning set out in the Preamble.

“Final Report” shall mean the complete statement of the work undertaken by the Contractor during the Contract Term, as further defined Article 2.1.2.

“Force Majeure” shall mean an event which is, unforeseeable, unavoidable and external at the time of Contract signature, occurs beyond the control of the affected Party and renders the performance of the Contract impossible for the affected Party, including but not limited to: Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.

“Intellectual Property Rights” (“IPR”) shall mean all rights in copyright, patents, know-how, Confidential Information, database rights, rights in trade-marks and designs (whether registered or not), applications for the registration of any of the foregoing and the right to apply for the registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

“Mid Term” shall mean the midpoint date between the Commencement Date and the Contract End Date.

“Mid Term Report” shall have the meaning set out in Article 2.1.1.

“Receiving Party” shall mean the Party receiving Confidential Information.

“Space Technology” shall be a term that encompasses hardware, software, and know-how developed for use in the space domain. It also encompasses satellite data products such as: Satellite Positioning, Navigation, and Timing (PNT), Satellite Earth Observation (EO) Data, Satellite Communications, and Satellite Automatic Identification System (AIS).

“ESA Spark Funding Germany Open Call” shall mean an Open Call for projects launched by ESA TB Germany and the European Space Agency Telecommunications and Integrated Applications Directorate (ESA-TIA), with the support of DLR.

“ESA Spark Funding Project” shall mean an activity funded under the ESA Spark Funding Germany initiative aiming at accelerating the product development process of an entity that is integrating space technology into a non-space application.

“Third Party” shall mean any person or entity other than the Agency and the Parties to this Contract or their personnel.

“Third Party Services” shall have the meaning set out in Article 3.

**ARTICLE 1 – SUBJECT OF THE CONTRACT, APPLICABLE DOCUMENTS**

1.1 Subject of the Contract

The Contractor undertakes to perform the Activity “[Project Name]” during the Contract Term.

1.2 Applicable documents

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

- a) The present ESA Spark Funding Contract;
- b) The Standard Requirements for Management, Reporting, Meetings and Deliverables attached as Appendix 1 hereto;
- c) The Minutes of the negotiation meeting held on ....., ref. ....., dated ....., not attached hereto but known to both parties;
- d) The Contractor’s Proposal ref. ....., , dated ....., Version ....., not attached hereto but known to both Parties.

**ARTICLE 2 – ACTIVITY OF THE CONTRACTOR; DELIVERABLES**

The Contractor undertakes to deliver the items mentioned below (the “Deliverables”), as part of the Activity in accordance with the following provisions:

**2.1 Documentation**

[OPTION MID-TERM REPORT]: in case the activity lasts longer than 6 months

2.1.1 Mid Term Report

At Mid Term, the Contractor shall provide to the ESA TB Germany’s representatives, specified in Article 6.3(a) and (b), a report detailing the technical and commercial work carried out by the Contractor as part of the Activity during the first half of the Contract Term (“Mid Term Report”).

The Mid Term Report template shall be provided by the ESA TB Germany to the Contractor at signature of this Contract.

The Mid Term Report shall be delivered by the Contractor to ESA TB Germany in electronic searchable, indexed and not encrypted PDF and original (WORD) format. [END OPTION MID-TERM REPORT].

### 2.1.2 Final Report

At least two (2) weeks prior to the Contract End Date, the Contractor shall provide ESA TB Germany with the draft version of the Final Report. ESA TB Germany shall review the draft Final Report and provide comments, if any, to the Contractor. The Contractor shall have a maximum of four (4) weeks to submit the final version of the Final Report to ESA TB Germany. The Final Report template shall be provided by the ESA TB Germany to the Contractor at signature of this Contract.

The Final Report shall be delivered by the Contractor to ESA TB Germany in electronic searchable, indexed and not encrypted PDF and original (WORD) format.

### 2.1.3 Business Plan and Commercialisation Roadmap, Socio Economic Impact Analysis, and Space Technology Commercial Arrangement Document

At least two (2) weeks prior to the Contract End Date, the Contractor shall provide ESA TB Germany with the draft version of the Business Plan and Commercialisation Roadmap, Socio Economic Impact Analysis, and Space Technology Commercial Arrangement Document. ESA TB Germany shall review the draft documents and provide comments, if any, to the Contractor. The Contractor shall have a maximum of four (4) weeks after receiving the comments to submit the final versions to ESA TB Germany. Further information about these deliverables can be found in Appendix 1.

## 2.2 **Other Deliverables**

As part of the ESA Spark Funding, the Contractor shall deliver proof of the developed product or service. This shall be delivered to the Agency through ESA TB Germany.

### 2.2.1 Software

- a. In the event that the Contractor develops software under the present Contract, the Agency shall receive from the Contractor via ESA TB Germany a licence (or equivalent) for the software or demonstrator.
- b. The Contractor shall deliver a licence (or equivalent) for the software or demonstrator at the end of the Contract Term or upon the cancellation of this Contract, unless otherwise agreed in writing by the Parties.

### 2.2.2 Hardware

- a) In the event that the Contractor develops hardware under the present Contract, the Agency shall receive from the Contractor via ESA TB Germany a prototype or mock-up/demonstrator for the purposes of displaying it in an exhibition or for the local ESA Spark Funding Manager's

and/or the Agency's promotional purposes, unless otherwise agreed in writing by the Parties.

- b) The Contractor shall deliver a prototype or mock-up/demonstrator at the end of the Contract Term or upon the cancellation of this Contract, unless otherwise agreed in writing by the Parties.
- c) Any photographs and visual presentations (i.e. an automatic slide show and/or video trailer) of any hardware developed by the Contractor during the Contract Term and as part of its Activity shall be delivered to the ESA TB Germany and/or the Agency upon request of the ESA TB Germany.

### **ARTICLE 3 – SERVICES TO BE PROVIDED BY THIRD PARTIES**

The Contractor shall notify the ESA TB Germany when entering into agreements with Third Parties to obtain specific advice/product relevant to the Activity ("Third Party Services"). The ESA TB Germany shall bear no responsibility for such advice or product.

For the purposes of this Article it is hereby understood that the ESA Spark Funding shall be spent in Germany unless the product/service is not available in such territory and in the event that there is an international collaboration (e.g. Product Developer is located in Germany but the Space Technology Provider is located elsewhere). In any case, the amount of ESA Spark Funding spent outside of Germany shall not exceed 50%.

### **ARTICLE 4 – CONTRACT TERM**

This Contract shall enter into force upon signature by the legal representatives of both Parties ("Commencement Date") and shall continue in force until the Contract End Date, unless it is cancelled or otherwise terminated in accordance with Article 13. In no case shall the Contract Term exceed the duration of twelve (12) months without prior approval from ESA.

### **ARTICLE 5 – FINANCIAL CONTRIBUTION AND PAYMENT**

#### **5.1. Financial Contribution**

- 5.1.1 The total financial contribution under the ESA Spark Funding Germany to the Activity **amounts to:**

60,000 EUR to accelerate the product development process of a company that is integrating space technology as well as to hone the commercialisation roadmap.

- 5.1.2 For the purposes of this Contract the above mentioned total financial contribution is stated to be a ceiling price which shall not be exceeded

and not constitute more than 75% of the total project costs and for which the Contractor shall perform the Activity in full.

5.1.3 The above amount does not include any taxes and duties.

## 5.2 Payment Terms

All payments shall be made to the Contractor according to the provisions stated in the present Article.

## 5.3 Categories of Payments

### 5.3.1 Progress Payment

- (a) The ESA TB Germany shall authorise progress payment in connection with this Contract and the Activity undertaken by the Contractor. The Contractor shall provide the ESA TB Germany with the supporting documentation that will justify the actual achievement of the milestone as defined in the Payment Plan specified in Article 5.4 below.
- (b) Progress payment shall not be considered as final payments. Progress payment will be deducted from the total price under this Contract.
- (c) Except with the specific agreement of the ESA TB Germany, the Contractor shall not divert from uses provided for in this Contract any material or services in respect of which advances or progress payments have been made. In the event of any violation of this provision the ESA TB Germany reserves the right to require the return of the advance and/or progress payments without prejudice to its rights under Article 13.

### 5.3.2 Final Settlement

- (a) The Contractor is allowed to claim the final settlement after fulfilment of all its obligations due under this Contract.
- (b) The final settlement to the Contractor is due upon confirmation by the ESA TB Germany of the satisfactory completion of the Activity and acceptance by the ESA TB Germany of all related deliverables due under the Contract.
- (c) Unless otherwise agreed between the Parties, the Final Settlement shall be made within thirty (30) days of receipt at ESA TB Germany of the documents and fulfilment of the requirements as specified in Article 5.3.2 b) above. Only upon fulfilment of these requirements shall the invoice for the Final Settlement be regarded as due by the ESA TB Germany.

5.4 ESA TB Germany shall make the following payments to the Contractor:



<b>MILESTONE DESCRIPTION</b>	<b>SCHEDULE DATES</b>	<b>AMOUNT IN EURO</b>	<b>%</b>
PROGRESS I: Upon signature of the ESA Spark Funding Contract by both parties	...	30,000	50%
FINAL: Upon successful Final Review, acceptance by ESA TB Germany of all deliverables due under the Contract and fulfilment of all contractual obligations by the Contractor under the Contract.	...	30,000	50%
<b>TOTAL</b>		<b>60,000</b>	<b>100%</b>

## 5.5 Payment conditions

- 5.5.1 The Contractor shall submit to the ESA TB Germany all invoices for the payments due under this Contract.
- 5.5.2 Payments shall be made by ESA TB Germany in EURO to the account specified by the Contractor. Such information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). Payments shall be considered as effected by the ESA TB Germany on time if the ESA TB Germany's orders of payment reach its bank within the payment period stipulated in Article 5.3.2 c) above.
- 5.5.3 Any special charges related to the execution of payments will be borne by the Contractor.

## **ARTICLE 6 – PARTIES REPRESENTATIVES AND COMMUNICATIONS**

- 6.1 All correspondence affecting the terms and conditions of this Contract and concerning its execution shall be made in writing. All communications or correspondence between the Parties shall be in English.
- 6.2 All correspondence for either Party shall be sent to both representatives of each Party stated in Articles 6.3 and 6.4, i.e. depending on the subject, addressed to one representative of the Party with a copy to the other.
- 6.3 For the purpose of this Contract the representatives of ESA TB Germany are:

(a) For technical matters:

Dr. Henno Boomkamp

Tel.: +49(0)160 966 169 31

Email: henno.boomkamp@telespazio.de

(b) For contractual and administrative matters:

Dr. Andreas Kanstein

Tel.: +49(0)172 346 5565

Email: kanstein@cesah.com

All correspondence for the ESA TB Germany shall be addressed to:

ESA Technology Broker Germany  
cesah GmbH  
Robert-Bosch-Strasse 7  
D-64293 Darmstadt  
Germany

6.4 For the purpose of this Contract the Contractor's representatives are:

(a) For technical matters:

Mr/Ms [redacted]  
Tel.: [redacted]  
Email: [redacted]

(b) For contractual and administrative matters:

Mr/Ms [redacted]  
Tel.: [redacted]  
Email: [redacted]

All correspondence for the Contractor shall be addressed to:

[redacted]  
[redacted]  
[redacted]

## **ARTICLE 7 – PUBLICITY AND VISUAL IDENTITY OF CONTRACTORS**

### **7.1 Publicity**

7.1.1 The Contractor shall not produce or disseminate any form of communication material, press releases or other publicity documents, including the advertising and news bulletins, which are intended by the Contractor for the press, internet / web-sites or television, which refer to ESA, ESA TB Germany or any aspect of ESA TB Germany activities, or permit any Third Party to do so, without the prior written consent of ESA TB Germany.

7.1.2 ESA TB Germany shall not produce or disseminate any form of communication material, press releases or other publicity documents which are intended by ESA TB Germany for the press, internet / websites or television, which refer to the Contractor or any aspect of the Contractor's activities, or permit any Third Party to do so, without the prior written consent of the Contractor's representative for contractual matters or its duly authorised representative.

### **7.2 Visual Identity of the Contractor**

7.2.1 The Contractor shall not use the official emblem of ESA, ESA TB Germany or any other logo or trademark which may be owned or used by the Agency or the ESA TB Germany for any purpose whatsoever, unless otherwise stated in this Article.

7.2.2 The Contractor may place the logo attached hereto in Appendix 2 and the following text line, in full and without amendment, on its promotional material and publicity documents, including exhibition and conference material and its internet site, as long as it is linked to the ESA TB Germany website <https://www.esa-technology-broker.de/> and stated as Contractor under ESA Spark Funding Germany programme, with exception of its products or any other material which it produces:

*“[Name of the Contractor + Title of the Activity] has been supported by ESA Space Solutions and the ESA Technology Broker Germany through the ESA Spark Funding initiative”* is referred to as the Text Line to be used in connection with the ESA Space Solutions logo.

Use of the ESA Space Solutions logo and Text Line by the Contractor shall be subject to the following conditions:

- (a) the Contractor shall submit to the representative for contractual matters or the duly authorised representative of ESA TB Germany for prior written approval all promotional material and publicity documents, on which the Text Line is to appear or is intended to be used, which approval may be withheld or withdrawn from any material or documents at any time at the discretion of the ESA TB Germany;

- (b) the prior approval of the ESA TB Germany for the use of the ESA Space Solutions logo and/or Text Line shall not constitute an endorsement or approval of the Contractor's Activity, products or services, or of their quality, technology or suitability for a particular use, neither shall it constitute verification by the ESA TB Germany of the compatibility of materials produced by the Contractor with applicable law and regulations; the Contractor shall refrain from using any statements which could suggest otherwise;
- (c) any use of the ESA Space Solutions logo and/or Text Line on amended or revised promotional material and publicity documents shall be subject to the same approval process as the original material and documents;
- (d) the Text Line may be translated into a different language other than English, subject to the approval of the representative for contractual matters or the duly authorised representative of the ESA TB Germany; and
- (e) no use of the ESA Space Solutions logo neither the Text Line shall be made in connection with material, products or documents that:
  - a. constitute an infringement of law and/or legal provisions;
  - b. undermine the reputation and dignity of the Agency or ESA TB Germany; and
  - c. promote or are related to alcohol, tobacco, religion, political affairs, intolerance, violence, firearms, pornography, obscenity, gambling, and narcotic drugs.

7.2.3 The Contractor shall keep appropriate records of the extent of its use of the ESA Space Solutions logo and Text Line, stating in particular the nature and time of use of the ESA Space Solutions logo and Text Line on its material, products and documentation. The Contractor shall provide the ESA TB Germany representative for contractual matters or its duly authorised representative with information and documents to evidence such use.

7.2.4 The use by the Contractor of the ESA Space Solutions logo and Text Line shall terminate upon the cancellation or expiry of this Contract as described in Article 13, unless otherwise specified in writing by ESA TB Germany, the Agency and the following Articles below.

7.3 The Agency has set-up and registered "Space Solutions" trademark to be used by Contractors on their products. To use this trademark, the Contractor has to enter into a licensing agreement with the Agency and pay a fee. Details can be found on:

[https://www.esa.int/Applications/Telecommunications\\_Integrated\\_Applications/Space\\_solutions/ESA\\_space\\_solutions\\_trade-mark\\_Product\\_Usage](https://www.esa.int/Applications/Telecommunications_Integrated_Applications/Space_solutions/ESA_space_solutions_trade-mark_Product_Usage)

## **ARTICLE 8 – CONFIDENTIALITY**

- 8.1 Each Party shall observe complete discretion with regard to all matters related to the activities of the other Party and each Party shall ensure compliance by its employees and agents with the obligations of confidence set out in this Article and assumed by that Party in relation to the other Party.
- 8.2 Neither Party shall disclose any documentation, information or materials obtained from the other Party, whether marked (by way of example as, “confidential” or “proprietary information”) or unmarked (“Confidential Information”), to any Third Party whatsoever without the prior written consent of the other Party in which case the other Party may require the recipient to sign a non-disclosure agreement. For the purposes of the present Article, documentation shall include any final documentation deliverable under this Contract.
- 8.3 Each Party may disclose Confidential Information on a strictly “need to know” basis to:
- its employees;
  - its professional agents.
- 8.4 On the Contract End Date, or upon the earlier termination or cancellation of this Contract in accordance with Article 13, the Receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Confidential Information, with exception of the Deliverables provided by the Contractor to ESA TB Germany.
- 8.5 The obligations in this Article shall not apply to Confidential Information:
- which is in the public domain at the time of disclosure or becomes part of the public domain after disclosure otherwise than through a breach of this Contract;
  - for which the Receiving Party can provide documentary evidence that it was in its lawful possession prior to disclosure to it by the Disclosing Party or which is lawfully and *in bona fide* obtained thereafter by the Receiving Party from a Third Party who, to the knowledge or reasonable belief of the Receiving Party, did not receive the Confidential Information directly or indirectly from the Disclosing Party when under a duty of confidentiality;
  - which, at the time of circulation is already known by the Receiving Party (as evidenced in writing) and is not hindered by any obligation not to circulate; or
  - which is required to be circulated by governmental or judicial order or applicable law.
- 8.6 The contents of this Contract are Confidential Information.

- 8.7 The obligations set out in this Article shall survive the termination, cancellation or expiry of this Contract.

## **ARTICLE 9 – INTELLECTUAL PROPERTY RIGHTS**

### 9.1 Ownership of Intellectual Property Rights

The Contractor shall own all Intellectual Property Rights arising out of the Activity performed under this Contract as may be granted by law, as far as no infringement of Third Party rights occurs.

### 9.2 Transfer of Intellectual Property Rights outside the ESA Member States

The Contractor shall inform the representatives of ESA TB Germany indicated in Article 6.3 a), b) well in advance of its intention to transfer outside the Agency's Member States any Intellectual Property Rights arising from the Activity performed under this Contract.

## **ARTICLE 10 – LIABILITY**

### 10.1 Limitations of Liability

- 10.1.1 Neither Party can exclude its liability to the other Party for:
- (a) death or personal injury caused by its negligence or that of its employees or agents;
  - (b) fraud, including fraudulent misrepresentations; and
  - (c) liability under Articles 8 and 9.

- 10.1.2 Subject to Article 10.1.1, the liability of the Parties under or in connection with this Contract, whether arising from negligence, breach of the Contract or any other obligation or duty, shall in no case exceed an amount equal to the Contract price, per event or series of connected events.

### 10.2 Infringements of the Law

- 10.2.1 The ESA TB Germany or the Agency shall not be responsible if the Contractor infringes any existing and/or future national, communal or provincial laws or decrees, rules or regulations in force in Germany or in any other Country whatsoever.

- 10.2.2 The Contractor shall indemnify the ESA TB Germany from and against all claims, proceedings, damages, costs and expenses arising out of any infringement of the Contractor's obligations under this Contract.

### 10.3 Compensation for Damage Caused to Goods and Property

Claims shall be settled as follows:

### 10.3.1 Claims for Direct Damages

- (a) The Contractor shall indemnify ESA TB Germany against, and shall be personally responsible for, direct damage to property and equipment to the extent that such damage is caused by the negligence of the Contractor and its employees or agents;
- (b) The ESA TB Germany shall indemnify the Contractor against, and shall be personally responsible for, direct damage to the Contractor's property and equipment to the extent that such damage is caused by the negligence of the ESA TB Germany or their employees (staff) or agents.

### 10.3.2 Claims for Indirect or Consequential Damages

- (a) The Parties shall in no circumstances be liable for indirect or consequential damages such as loss of use, loss of business, loss of data, loss of rights, loss of services, loss of goodwill, Third Party claims to the extent that they represent the indirect loss of a Third Party, loss of revenues or anticipated savings, or for any indirect financial loss or indirect economic loss or for any indirect or consequential loss or damage whatsoever suffered by the other Party;
- (b) The Parties shall in no circumstances be liable for loss of profit, whether direct or indirect of the other Party.

### 10.4 Damages to Third Parties caused by the Contractor

The ESA TB Germany shall not be liable for any damage caused by the Contractor and/or its employees or agents to a Third Party during the performance of the Activity under this Contract.

### 10.5 Delay in Delivery due to Force Majeure

In the event of an alleged delay in delivery due to Force Majeure, the Contractor shall report to the ESA TB Germany the Force Majeure event and its immediate consequences within one (1) week after its occurrence. The Contractor shall bear the burden of proof for the existence, duration, and consequences of Force Majeure, such proof to be provided within one (1) month from the occurrence of the Force Majeure event.

In case of Force Majeure, the Contractor shall not be considered at default and its obligations under the Contract shall be suspended during the Force Majeure event. The Contractor shall make reasonable efforts to mitigate the impact on the schedule and the performance of its contractual obligations.

#### **[OPTION: if Subcontractors]**

Force Majeure event at Sub-contractor's level shall be considered a case of Force Majeure for the performance of the Contractor's obligations, if

the Contractor proves that the delay in the delivery of the deliverables covered by the Sub-contract due to the Force Majeure event had an unavoidable impact on the final Delivery dates stipulated in the present Contract.

**[END OPTION]**

In case of Force Majeure, an extension of the time-limit for execution or a postponement of delivery dates shall be granted in writing by the ESA TB Germany.

Either Party may implement the present Article should unknown consequences of the Covid-19 outbreak at the time of signature of the present Contract affect the performance of its obligations, despite such event being known to the Parties at the time of Contract signature.

**ARTICLE 11 – CHANGES TO THIS CONTRACT**

11.1 Introduction of a Change

11.1.1 For all changes to this Contract, whether requested by the ESA TB Germany or initiated by the Contractor, the Contractor shall submit a proposal for a Contract Change Notice (“CCN”).

11.1.2 The Contractor shall ensure - in liaison with the ESA TB Germany - that each CCN proposal is fully coordinated and that all reasonably foreseeable implications of the change have been considered by the Contractor and the ESA TB Germany. The Contractor shall, on the request of the ESA TB Germany, provide additional documentary evidence of the effect of the change to both Parties.

11.2 Approval or Rejection of the CCN Proposal

11.2.1 Should the CCN proposal be approved by the ESA TB Germany, a corresponding CCN shall be prepared by the ESA TB Germany’s contractual representative as stated in Article 6.3 b) and submitted to both Parties for signature.

11.2.2 Should the CCN proposal be rejected for any reason by the ESA TB Germany, the Contractor shall be informed accordingly, together with the reasons for the rejection. At the request of either Party, the change may be discussed at a Change Review Board, consisting of a contractual and a technical representative of each Party.

11.3 Implementation and Status of an approved CCN

Upon signature of the CCN by both Parties, the CCN will have immediate effect and will constitute a binding contractual agreement between the Parties. The CCN will serve as an applicable document to this Contract.



## **ARTICLE 12 – TERMINATION**

### **12.1 Right of Termination**

**12.1.1** Each Party reserves the right, after full consideration of all relevant circumstances and following a formal notification, to terminate this Contract in the event of a material breach of the Contract by the other Party.

**12.1.2** In the event of such termination, the Contractor shall keep the amounts already paid for achieved milestone, if any, and shall be entitled to claim the cost, properly evidenced, submitted by the Contractor to the ESA TB Germany and accepted by the ESA TB Germany.

**12.1.3.** The ESA TB Germany shall in no circumstances be liable to pay any sum which deviates from the provisions set out in Article 5 above, and when added to the sum already paid, due or becoming due to the Contractor under this Contract by ESA TB Germany, exceeds the total price for the Activity set forth in this Contract, except in cases of gross negligence or wilful misconduct of the Contractor.

**12.1.4.** In case of termination of the Contract, the provisions under Article 10 of this Contract shall not be affected.

#### **12.1.5 Termination in special cases**

ESA TB Germany may at any time terminate the Contract by giving written notice with immediate effect in any of the following events:

- a) if the Contractor becomes insolvent or if its financial position is such that within the framework of its national law, legal action leading towards bankruptcy may be taken against it by its creditors;
- b) if the Contractor resorts to fraudulent practices in connection with the Contract, especially by deceit concerning the nature, quality or quantity of the supplies, and the methods of processes of manufacture employed or by the giving or offering of gifts or remuneration for the purpose of bribery to any person in the employ of ESA TB Germany or acting on its behalf, irrespective of whether such bribes or remuneration are made on the initiative of the Contractor or otherwise.

**12.1.6** In case of Force Majeure and if the Force Majeure event and its consequences continue for more than two (2) months from the start date of the Force Majeure event, either Party may terminate the Contract by giving not less than one (1) month notice to the other Party.

**12.1.7** In case of termination due to Force Majeure the amount to be paid shall be calculated as per Article 12.1.2 and 12.1.3 above. No other payments or indemnities shall be due by the ESA TB Germany to the Contractor.

## 12.2 Consequences of Termination

Any information, in documentary or other physical form, pertaining to the Activity carried out by the Contractor during the Contract Term, remains the property of ESA TB Germany and shall be handed over to ESA TB Germany upon the expiry or termination of this Contract. This shall include:

- (a) any information and documentation under Article 2.1;
- (b) any software under Article 2.2.1;
- (c) any hardware under Article 2.2.2.

The Contractor shall deliver to ESA TB Germany all documentation that was to be delivered in case the Contractor had completed the Activity in full (see Article 5.3.2).

The Contractor agrees to reimburse to ESA TB Germany any amount that would have not been found acceptable for the Final Settlement should the Contract have not been terminated before its envisaged Contract End Date.

## **ARTICLE 13 – ASSIGNATION OF THIS CONTRACT**

The Contractor is not be permitted to assign its rights and/ or transfer its obligations under this Contract in whole or in part to a Third Party (“assignee”) without the prior formal approval by ESA TB Germany.

## **ARTICLE 14 – APPLICABLE LAW; DISPUTE SETTLEMENT**

14.1 This Contract shall be governed by the laws of Germany.

14.2 The Parties will consult with each other promptly when events occur or matters arise that may occasion a question of interpretation or implementation of the terms of this Contract.

The Parties shall use their best efforts to settle any dispute arising out of the Contract amicably.

Any issue of interpretation or implementation of this Contract that cannot be settled by the Parties’ Representatives indicated in Article 6.3 and 6.4 shall be referred to arbitration.

14.3 Any dispute arising out of the interpretation or implementation of this Contract that cannot be settled as described in Article 14.2 above, at the request of either Party, shall be submitted to arbitration according to the Rules of Arbitration of the International Chamber of Commerce. The Arbitration Tribunal shall sit in Darmstadt, Germany and the arbitration proceedings shall be conducted in English, unless otherwise agreed between the Parties. The enforcement of the award shall be governed by the rules of procedure in force in Germany.

**ARTICLE 15 – DATA PROTECTION**

To the extent that is reasonably necessary, in connection to the Contractor’s Activity under this Contract, its data may be disclosed to others, including employees (staff) and agents of ESA TB Germany and all ESA TB Germany partners, for any studies and/or reporting that may be carried out by the Agency and/or the ESA TB Germany. The Contractor hereby consents to the recording, processing, use and disclosure of its personal data as set out here above (including the recording, processing, use and disclosure of its sensitive personal data to the extent required by reason of the Contractor’s performance of the Activity under this Contract), including the transmission of such data between ESA TB Germany and other members of the ESA Space Solutions Network for the fulfilment of the above requirements.

Prior to the contract signature, the Contractor shall sign a Personal Data Processing Agreement with ESA TB Germany, covering the latter’s personal data processing of any and all employees (staff) of the Contractor involved in the Contract implementation.

In addition, the Contractor must obtain a prior consent from its employees (staff), covering the above-mentioned data processing to be performed by ESA TB Germany.

**ARTICLE 16 – EXECUTION OF THE CONTRACT**

The Parties agree that digital/ electronic signature of this Contract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.

In witness whereof, the Parties hereto have executed this Contract, with effect as of the signature of the Contract.

Electronically signed by the Parties to this Contract,

For ESA TB Germany:

For [Contractor]:

In: Darmstadt

In: ...

Date: .....

Date: .....

Signature  
Name and title  
Dr. Andreas Kanstein  
Managing Director cesah GmbH

Signature  
Name and title  
.....  
.....

## **APPENDIX 1 – STANDARD REQUIREMENTS FOR MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES**

This document contains the standard requirements for management, reporting, meetings and deliverables with regard to ESA Spark Funding Germany.

### **1. MANAGEMENT**

#### **1.1 General**

The Contractor shall implement effective and economical management for the Activity. The nominated representatives of the Contractor shall be responsible for the management and execution of the Activity to be performed under the Contract.

#### **1.2 Communications**

All communications sent by the Contractor to ESA TB Germany shall be addressed to the representatives of ESA TB Germany nominated in Article 6.3 of this Contract.

### **2. REPORTING**

#### **2.1 Minutes of Meetings**

The Contractor shall be responsible for the preparation and distribution of minutes of meetings held in connection with this Contract. Electronic versions of the minutes of each meeting shall be issued and distributed to all participants, including the representatives of ESA TB Germany, not later than ten (10) days after the meeting concerned.

The minutes shall clearly identify all agreements made and actions accepted at the meeting together with an update of the Action Item List (AIL), if any. The minutes shall be signed.

#### **2.2 Problem Notification**

The Contractor shall notify the ESA TB Germany representatives of any problem likely to significantly impact the progress of the Activity.

### **3. MEETINGS**

#### **3.1 Kick-off Meeting**

The kick-off meeting shall take place at ESA TB Germany premises or by teleconference at the beginning of the Contract Term. ESA TB Germany reserves the right to invite the Agency and the Germany National Delegation to participate in the kick-off meeting.

[**OPTION**: In case the Activity lasts longer than 6 months.

#### **3.2 Mid-Term Review**

At Mid Term a meeting shall be held (“Mid-Term Review”), where the Contractor shall present the Mid-Term Report, to verify the status of the Activity and to confirm its feasibility. ESA TB Germany reserves the right to invite the Agency and the Germany National Delegation to participate in in the Mid-Term Review meeting. **END OPTION**]

#### **3.3 Additional Meetings**

Additional meetings may be requested either by ESA TB Germany or the Contractor.

#### **3.4 Notice and Agenda for Meetings**

For all meetings the Contractor shall ensure that proper notice to ESA TB Germany is given at least two (2) weeks in advance of when ESA TB Germany participation is required. The Contractor is responsible for ensuring the participation of its personnel and/or third party advisors, as needed.

For each meeting the Contractor shall propose an agenda in electronic form and shall compile and distribute handouts of any presentation given at the meeting.

#### **3.5 Final Review**

At the end of the Activity undertaken by the Contractor a meeting shall be held (“Final Review”), where the Contractor shall present the Final Report, to verify the completion of the Activity. ESA TB Germany reserves the right to invite the Agency and the Germany National Delegation and to participate in in the Final Review meeting.

### **4. DELIVERABLES**

#### **4.1 Documentation to be delivered**

In addition to the documents to be delivered according to section 2 above, the documentation set out in the present section shall also be deliverables.

All documentation deliverables mentioned in this section (including all their constituent parts) shall be delivered as follows:

- in electronic searchable form on computer readable media (e.g. PDF-format, and original in WORD, Excel, etc.) as agreed by ESA TB Germany, and in other exchange formats where relevant (e.g. HTML).

The draft version of the documentation shall be sent to the ESA TB Germany representatives in electronic form for approval not later than two (2) weeks before the documentation is to be presented.

[OPTION: In case the Activity lasts longer than 6 months.

#### 4.2 Mid Term Report

The Contractor shall document the status of its technical and commercial progress in the Mid Term Report and confirm the feasibility of the Activity. The Mid Term Report shall be presented by the Contractor to ESA TB Germany at the Mid Term Review. The Contractor shall submit the presentation of the Mid Term Report to ESA TB Germany two (2) weeks in advance of the Mid Term Review meeting. END OPTION]

#### 4.3 Final Report

A Final Report shall be produced by the Contractor at the end of the Contract Term. It shall be a complete statement of all the work undertaken by the Contractor during the Contract Term (“Final Report”). It shall not refer to any other report that may have been provided by the Contractor and shall detail the full results of the Activity to include:

- (a) Overview of Project and Status;
- (b) Technical Report
  - Progress on Tasks
  - Final Gantt Chart
  - Final Cost Breakdown
- (c) Project Highlights and News
- (d) Challenges and Concerns
- (e) Deliverables
  - D1 Prototype or Mockup/Demonstrator
  - D2 Business Plan and Commercialisation Roadmap
  - D3 Socio Economic Impact Analysis
  - D4 Space Technology Commercial Arrangement Document
- (f) Minutes of Meeting

#### 4.4 Photographic Documentation

Photographic documentation comprises photographs of events organised by the ESA TB Germany and photographs of hardware under manufacture by the Contractor showing major progress, as well as of tests and test set-ups. Videos presenting the functioning of hardware/test set-up and relating test activities may also be included in this category.

#### 4.5 D1 Prototype or Mock-up/Demonstrator

##### 4.5.1 Software (including computer programmes)

A licence (or equivalent) for the software developed by the Contractor shall be a deliverable.

The Contractor shall provide a demonstration of the software to ESA TB Germany representative including a trailer/movie clip illustrating the use and application of their developed software program for the purpose of ESA exhibitions.

##### 4.5.2 Hardware

A prototype or mock-up/demonstrator manufactured by the Contractor shall be a deliverable. In case of very high production costs, the Contractor can keep the original prototype and deliver a mock-up of the prototype. The Contractor shall however keep the prototype available for lending it to ESA for exhibitions.

The Contractor shall provide a demonstration of the software to ESA TB Germany representative including a trailer/movie clip illustrating the use and application of their developed hardware program for the purpose of ESA exhibitions.

#### 4.6 D2 Business Plan and Commercialisation Roadmap (suggested length: 10 pages)

The contents of this document shall include:

- Presentation of the quantitative market analysis for the envisaged product/services including the size and attractiveness of the market/customer segment(s).
- Presentation of the competitive environment and of the main competitors including information on their products/services and value propositions.
- Presentation of the financial plan and financial projections for development and sales, including key financial indicators such as CAPEX, OPEX, Break Even Point, Net Present Value, financial projections for the next 5 years.
- A discussion of your market penetration projections (i.e. percentage of market share, etc.), including key assumptions.

- Presentation of the team, competences and capabilities required to implement and deliver the product/service. In case of missing competences and capabilities, presentation of the intended strategy to acquire them.
- Presentation of the conclusion concerning the feasibility and viability of the specified product/service and associated system, and wrap up of the critical success factors and risks for the implementation of the solution,
- Definition of the next steps for product/service implementation, taking into account potential success factors and showstoppers (e.g., technology maturity, lack of service provision history, capital requirements, etc.) and identification of critical milestones.
- Describe in detail what the next step shall be, highlighting any further support required.

#### 4.7 D3 Socio Economic Impact Analysis

(suggested length: 2 pages)

The contents of this document shall include:

- Assessment of the current and potential socio-economic impact of resulting operational product/services regarding expected revenues, job creation across the value chain, export opportunities, establishment of new markets, investment leverage, and societal benefits.

#### 4.8 D4 Space Technology Commercial Arrangement Document

(suggested length: 1 page)

The contents of this document shall include:

- Details regarding the type of commercial arrangement that has been agreed/envisioned with the Space Technology provider
- Length of agreement
- Conditions of agreement
- Value of agreement



APPENDIX 2 – LOGO [ESA Space Solutions]

