

Section IV. Draft Contract

Between:

Verhaert New Products & Services

Hogenakkerhoekstraat , 21
B-9150 Kruibeke

(hereinafter referred to as the Coordinator)
located at *Kruibeke, Belgium*

represented by *[INSERT NAME]*

and

[INSERT NAME OF THE ENTITY]
(hereinafter referred to as “the Contractor”)
located at *[INSERT PLACE]*

represented by *[INSERT NAME]*, its *[INSERT TITLE]*

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

PREAMBLE

1. WHEREAS THE COORDINATOR is a company based in Belgium which acts as the Prime Broker of the European Space Agency (ESA) in the field of technology transfer from space and leads the coordination of the ESA Technology Transfer Initiative Brokers' Network;
2. WHEREAS the European Space Agency (ESA) currently undertakes an initiative to encourage, by means of technology transfer and incubation, the utilization of space technology for general non-space industrial, scientific and commercial uses;
3. WHEREAS the Coordinator has been appointed by ESA to set-up, administer and implement the call of the Earth Observation Entrepreneurship Initiative (hereinafter called "EOEI");
4. WHEREAS this call will allow new players in the world of Earth Observation(EO) and entrepreneurs, both aspiring and early-stage, to submit Idea proposals in order to stimulate the creation of the new generation of EO services for future acceleration to market through the ESA Business Incubation Centres (ESA BICs);

the following has been agreed:

ARTICLE 1: DEFINITIONS, SCOPE, BASELINE AND FUNDING

1.1 DEFINITIONS

“ACTIVITY” shall mean implementing the Idea proposal submitted to the Coordinator with an objective to produce a preliminary eBAP including a technical proposal (with a mock-up of the prototype service) and a business plan.

“AGENCY” shall mean the European Space Agency.

“CONFIDENTIAL INFORMATION” shall mean any proprietary information, documentation or data of personal or technical nature, including but not limited to any ideas, know-how, concept, designs, drawings and specifications, whether in written, electronic, photographic and/or other forms disclosed by the Disclosing Party to the Receiving Party, pursuant to this Agreement.

“CONTRACT” shall mean the present contract.

“CONTRACT TERM” shall be the period between the commencement date and the date of termination of the contract.

“DELIVERABLES” shall have the meaning set out in Article 3.2.

“DISCLOSING PARTY” shall mean the Party disclosing Confidential Information.

“EBAP” shall constitute a complete ESA BIC Application Package

“FINAL REPORT” shall present the findings of the project and an overview of the costs.

“INTELLECTUAL PROPERTY RIGHTS” shall mean all registered intellectual property rights and unregistered intellectual property rights granted by law including all patents, trademarks, copyrights, design rights, database rights, topography rights, know-how and trade secrets or equivalent rights or rights of action anywhere in the world.

“MONTHLY PROGRESS REPORT” shall mean a report detailing the work carried out by the Applicant as part of the Activity in the previous month.

“EOEI” or “CALL” shall mean the instrument by which Idea proposals are submitted to the Coordinator.

“RECEIVING PARTY” shall mean the Party receiving Confidential Information.

“THIRD PARTY” shall mean any person or entity other than the Parties to this Contract or their personnel as well as the Agency and the Applicant.

1.2 SCOPE

The scope of this Contract sets forth the terms and conditions governing the relationship and the undertakings of the Parties with regard to the Activity.

1.3 BASELINE

The Parties shall perform their undertakings for the Activity in accordance with the following documents listed in order of precedence:

- The present Contract;
- The Minutes of Meeting with *ref: [...] dated [...]*, not attached hereto but known to both Parties;
- The Applicant’s Idea proposal *ref. [...] dated [...]*, not attached hereto but known to both Parties.

ARTICLE 2: PRICE

2.1 PRICE OF THE CONTRACT

The total price of this Contract amounts to:

€ *[...]*

[...] _____ *EURO).*¹

2.2 TYPE OF PRICE

The price type of the present Contract is stated to be of a firm fixed type, i.e. it is not subject to any price adjustment or revision by reason of the actual costs incurred by the Applicant in the performance of the Contract.

¹ The funding is granted in net amounts (not including VAT).

2.3 PAYMENT PLAN

2.3.1 The Coordinator may authorise the payment of an advance payment in connection with this Contract.

2.3.2 Advance payments are not final payments and shall be deducted from the sums due to the Applicant under this Contract.

2.3.3 The Applicant shall be allowed to claim final settlement when all their obligations under this Contract have been fulfilled. The final payment is due by the Coordinator upon:

- (a) receipt by the Coordinator of the relevant invoice(s) from the Applicant; and
- (b) certification by the Coordinator of the satisfactory completion of the Activity under this Contract.

2.3.4 Unless otherwise provided for in this Contract, a period of 30 (thirty) days shall be granted to the Coordinator for the execution of the final payment.

2.3.5 The Coordinator shall make the following payments:

MILESTONE DESCRIPTION	SCHEDULE DATES	AMOUNT	IN EURO
ADVANCE: upon signature of this Contract by both Parties [max 50%]	<u>TBD</u>	<u>TBD</u>	
FINAL: upon acceptance by the Coordinator	<u>TBD</u>	<u>TBD</u>	

of all deliverables documentation
under this Contract [min 50%]

ARTICLE 3: OBLIGATIONS AND DELIVERABLES OF THE APPLICANT

3.1 OBLIGATIONS

The Applicant shall develop the eBAP (including at least a technical proposal with a mock-up of the prototype service and a business plan) corresponding to the Idea proposal, which shall cover at least all items exposed in the Applicant's proposal on the basis of which the Applicant was selected through the call.

3.2 DELIVERABLES

The Applicant shall deliver the items mentioned below, as part of the Activity in accordance to the following provisions.

3.2.1 Final Report and eBAP

A draft version of the Final Report and eBAP produced (including the technical and business part) as a result of the Activity shall be submitted electronically to the Coordinator 15 (fifteen) days prior to the Contract Term.

At the Contract Term, the Applicant shall deliver to the Coordinator the Final Report, and eBAP in electronic version (.doc and .pdf) not later than [three months after signature of the present contract].

3.3 MEETINGS

The Applicant may be required to attend a Final Review meeting to be held at ESA/ESRIN or an alternative location in the ESA Member States.

ARTICLE 4: COMMUNICATIONS AND KEY PERSONNEL

4.1 COMMUNICATIONS

4.1.1 All correspondence affecting the terms and conditions of this Contract and concerning its execution shall be made or confirmed in writing. All communications or correspondence between the Parties shall be in English.

4.1.2 All correspondence for either Party shall be sent to the representative of each Party indicated in Articles 4.3 and 4.4.

4.1.3 For the purpose of this Contract the Coordinator representatives are:

(a) For technical matters:

Mr.

E-mail:

Tel.:

Fax.:

or a person duly authorized by him/her.

(b) For administrative matters:

[insert name]

E-mail:

Tel.:

Fax.:

or a person duly authorized by him/her.

4.1.4 For the purpose of this Contract, the Applicant's representatives are:

(a) For technical matters:

[insert name]

E-mail:

Tel.:

Fax.:

or a person duly authorized by him/her.

(b) For administrative matters:

[insert name]

E-mail:

Tel.:

Fax.:

or a person duly authorized by him/her.

4.2 KEY PERSONNEL

4.2.1 The work shall be executed by the key personnel nominated in the Applicant's proposal.

4.2.2 Any replacement to other tasks of such key personnel, to the extent that they are not available as foreseen in the Applicant's proposal, requires the prior written approval of the the Coordinator representative as mentioned in Article 4.1. Appropriate requests shall be accompanied by a justification for the proposed change and by a comprehensive CV of the new key personnel proposed.

ARTICLE 5: LIABILITY

5.1 LIMITATION OF LIABILITY

5.1.1 If a party infringes any existing and/or future national, communal or provincial laws or decrees, rules or regulations in force in [name of country] or in any other country whatsoever, the other party shall not be held responsible for it.

5.1.2 Each Party shall indemnify the other Party from and against all claims, damages, costs and expenses arising out of any infringement of either Party's obligations under this Contract.

5.1.3 Subject to Article 5.2.3, the liability of one Party towards the other under or in connection with this Contract whether arising from negligence, breach of contract or any other obligation or duty shall not exceed, an amount equivalent to EURO [*amount to be specified*], per event or series of connected events.

5.2 INDIRECT OR CONSEQUENTIAL DAMAGES

5.2.1 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.

5.2.2 The Parties shall in no circumstances be liable for loss of profit, whether direct or indirect.

5.2.3 Neither Party excludes 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 Article 6.

ARTICLE 6: CONFIDENTIALITY, USE OF INFORMATION AND PUBLICITY

6.1 CONFIDENTIALITY AND USE OF INFORMATION

6.1.1 The contents of this Contract constitute confidential information.

6.1.2 It is understood and fully agreed by the Parties that the use of any information provided by one Party to the other Party under this Contract is strictly limited to the scope and purpose of this Activity.

6.1.3 Upon the end of the Contract Term, or [earlier termination or cancellation] of this Contract in accordance with Article 8, the receiving Party shall promptly return to the Disclosing Party or otherwise certify the destruction of all Confidential Information, including all Deliverables provided by the Applicant to the Coordinator.

6.2 PUBLICITY

6.2.1 For the purpose of this Contract, the Applicant shall not produce or disseminate any form of communication material, press releases or other publicity documents, including the Applicant's advertising and news bulletins, which refer to the Activity under this Contract, the Coordinator or/and the Agency or any aspect of their activities, or permit any Third Party to do so, without the prior written consent of the Coordinator or/and the Agency's contractual representative or their duly authorised representative.

6.2.2 The Applicant shall not use the logo of the Coordinator or/and the official emblem of the Agency or any other logo or trademark they may own without the prior written consent of the Coordinator or/and the Agency's contractual representative or his duly authorised representative.

ARTICLE 7: APPLICABLE LAW AND DISPUTE SETTLEMENT

7.1 APPLICABLE LAW

This Contract shall be governed by the laws of [.....] .

7.2 ARBITRATION / DISPUTE SETTLEMENT

The arbitration proceeding will take place in [city].

ARTICLE 8: ENTRY INTO FORCE, TERMINATION AND MODIFICATIONS

8.1 ENTRY INTO FORCE

This Contract shall enter into force upon signature by the legal representatives of both Parties and shall continue in force until *[insert date]* (“Contract Term”), unless it is cancelled or otherwise terminated in accordance with Article 8.2.

8.2 TERMINATION

8.2.1 Each Party reserves the right to terminate this Contract, with immediate effect, in the event that the other Party fails to fulfill its undertakings under this Contract.

8.2.2 In no event shall termination of this Contract imply any payment or reimbursement of the cost incurred by either Party prior to termination, nor of any damages. Termination of this Contract shall not affect the Parties’ continuing rights and obligations under this Contract, Article 6 (Confidentiality, Use of Information and Publicity) in particular.

8.3 MODIFICATIONS

At the request of either Party, the modalities outlined in this Contract may be modified in writing by mutual consent. Such modification shall enter into force and have immediate effect at the date of signature by the legal representatives of both Parties.