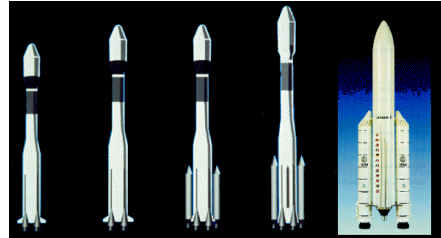
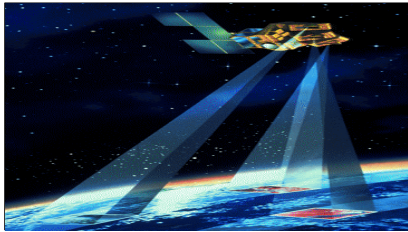


PARIS, 1ST OCTOBER 2009
NO. DAJ/2009/0021317

PROCUREMENT,
SALES
AND LEGAL AFFAIRS DIRECTORATE



SPECIAL ADMINISTRATIVE TERMS AND CONDITIONS RELATING TO C.N.E.S CONTRACTS

Version dated 01 October 2009

Headquarters: 2 place Maurice Quentin – 75039 Paris cedex 01 FRANCE – Tel.: 33 (0)1 44 76 75 00 - www.cnes.fr

Launch vehicle directorate: Rond Point de l'Espace – Courcouronnes – 91023 Evry cedex FRANCE – Tel.: 33 (0)1 60 87 71 11

Toulouse space centre: 18 avenue Edouard Belin – 31401 Toulouse cedex 9 FRANCE – Tel. : 33 (0)5 61 27 31 31

French Guiana space centre: BP 726 – 97387 Kourou cedex GUIANA – Tel.: 594 (0)5 94 33 51 11

Paris Trade and Companies Registry No. B 775 665 912, Business Registration No. 775 665 912 000 82, Business sector code 72.19 Z
VAT No. FR 49 775 665 912

[2008 CCAP 2009 version finale_EN.doc](#)

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PREAMBLE

The Special Administrative Terms and Conditions relating to CNES contracts are applicable to all CNES contracts including those established in accordance a framework agreement; in addition they may also be used in the context of Conventions signed by the institution. They comprise two parts:

The standard clauses (ARTICLE - I to ARTICLE - XIV) which are all applicable to the contract, unless one or more of the clauses have been specifically excluded in the “standard clauses” article of the framework agreement or the tender;

The optional clauses (ARTICLE - XV to ARTICLE - XLI) which are not applicable to the contract unless they have been specifically referred to in the “optional clauses” article of the framework agreement or the tender; this article may amend or provide details on the referred optional clauses.

The standard clauses and optional clauses expressly referred to form an integral part of the tender.

They may complement the corresponding provisions of the general administrative terms and conditions of Government contracts referred to in the terms and conditions article of the framework agreement or the tender and prevail over these provisions.

STANDARD CLAUSES

ARTICLE - I to ARTICLE - XIV

ARTICLE - I. TAX SYSTEM

The VAT rate applicable is the rate in effect as 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.

The contractor undertakes to provide CNES, within the time limits stipulated in the contract, with the elements required for preparing export files.

CNES shall reimburse the contractor all taxes applicable for the execution of the contract, on submission of the relevant documentary evidence.

ARTICLE - II. PRICE TYPE - AMOUNT

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

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 co-efficient. The revised price is obtained by applying the final co-efficient 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 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 annexed to the tender.

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

ARTICLE - III. CONDITIONS OF PAYMENT

III.A. PAYMENT SCHEDULE

All payments are set out in a schedule containing the number, the pay-by date, the description of the technical or contractual phase and the amount of each event, as well as the factors applicable for calculating late penalties or the non-penalising character of the event. The payment schedule shall form part of the tender.

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, signed by the signatory of the contract. The service provider shall confirm acceptance by returning a copy of the duly signed letter.

III.B. LUMP SUM ADVANCE

The lump sum advance shall be calculated on the amount of the contract or tranche or purchase order inclusive of all taxes. It is paid before commencement of work and an invoice shall be issued. The advance amount and conditions of its payment shall be specified in the payment schedule. The lump sum advance cannot be 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.

The absence of a lump sum advance in the payment schedule amounts to a waiver from the contractor.

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

III.C. OPTIONAL ADVANCE

An optional advance may be paid to the contractor. It substitutes the lump sum advance.

It shall be calculated and paid as per the conditions stipulated in the tender.

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. It shall initiate issuance of an invoice.

III.D. PROGRESS PAYMENTS

Progress payments are intermediary payments paid to the contractor on presentation of an invoice. This amount is set forth in the payment schedule and shall be fixed based on the normal progress of the work.

III.E. SYSTEM for ADVANCES and Progress PAYMENTS

The payment of advances and progress payments are not definitive payments; their beneficiary shall be owed as much until the next definitive payment is settled (definitive, partial or balance payment).

III.F. 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 purchase order or the payment schedule appended to the tender.

III.G. BALANCE PAYMENT

The payment of the balance amount of a purchase order, work package or the contract may be subject to submission of relevant documentary evidence or of documents specified in the purchase order, tender or payment schedule.

III.H. PAYMENT PERIOD

Unless otherwise specified in the contract, the amount due shall be paid within a period not exceeding 45 days. This period is 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 relevant documentary evidence.

III.I. LATE PAYMENT PENALTIES

In the case of delay in payment, late payment penalties on the amount due shall be paid by CNES. This interest shall be paid on submission of the corresponding invoice by the contractor. The interest shall be calculated by applying three times the legal interest rate as prevailing on the date the late payment penalties started accumulating on the amount due (Incl. VAT). The interest period is calculated from the day following the expiry of the final payment date (as defined in Article 0 of SATC) until and including the date on which the final payment of the principal amount is settled.

ARTICLE - IV. PAYMENT REQUESTS

The invoices shall be in triplicate (1 original and 2 copies) in the name of CENTRE NATIONAL D'ETUDES SPATIALES and shall be sent to the department address specified in the STANDARD CLAUSES article.

The invoices must refer to the contract number in full and when appropriate to the purchase order number. They must also include the details of the event entitling the payment (number, date, technical or contractual phase, amount). In 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 the payment and must be accompanied, if required, by the relevant documentary evidence (ref. 0).

ARTICLE - V. METHOD OF PAYMENT, OBJECTIONS

CNES shall release the amount due on execution of the contract through transfer of funds to the bank or postal account of the contractor specified in the STANDARD CLAUSES article of the framework agreement or the contract (one account per contractor, per sub-contractor receiving direct payment, and per currency when appropriate).

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

The accounts manager for CNES designated in the STANDARD CLAUSES article of the framework agreement or the contract shall be responsible for payments; he/she must be notified of all oppositions and pledges.

ARTICLE - VI. PLEDGE, ASSIGNMENT

The contract may be assigned or pledged (based on the shares attributed to the contractor and its sub-contractors to whom direct payments are made).

To this effect, CNES shall provide the contractor either with a copy of the original contract duly signed stating that this contract 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 assignment conforming to the model defined by the order of the Minister for Economic Affairs dated 28 August 2006.

The unique copy of the contract or the certificate of assignment shall be handed over by the assignee or pledged organisation to a designated public accountant as documentary evidence of the payment.

When confidentiality required in matters of national defence precludes issuance of a copy of the contract to the beneficiary of an assignment or pledge, CNES shall issue the contractor a unique copy of the contract or a certificate of assignment 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 assignment be restricted to the information required for the assignment or pledge.

If any changes are made in the designation of the account 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 assignment.

For any contract requiring designation of several accountants, CNES shall issue as many unique copies of the contract or certificate of assignment as required, specifying 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.

In the case of a contract involving purchase orders or tranches, if the contractor or the sub-contractor to whom direct payment is made wishes to assign or pledge the receivables from the contract in many parts, they may request restriction of the unique copy of the contract to the amount mentioned in a purchase order, work package or tranche, specifically featured individually in the contract.

In the case of a contract executed by a joint liability pool of contractors, each organisation shall be issued a unique copy of the contract or a certificate of assignment limited to the total services assigned to that specific organisation.

In the case of a contract executed by a joint and several liability pool of contractors, a unique copy of the contract or certificate of assignment shall be issued in the name of the pool, when the services offered by each of the organisations in the pool are not mentioned individually. If the services are mentioned individually, a unique copy of the contract or certificate of assignment corresponding to the services provided shall be issued to each organisation.

The assignment or pledge must:

- Be notified to the accounts manager designated in the STANDARD CLAUSES article of the framework agreement or in the contract 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 contract number provided by CNES and, when appropriate, must contain the purchase order number.

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 the 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 recipients may also request the accounts manager to provide a detailed statement on the objection to payment of the accounts receivable retained by the contractor. If the request is made through registered mail with acknowledgement of receipt, justifying the quality of their services, 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 - VII. LATE PAYMENT PENALTIES – DEFERMENT OF SERVICES

VII.A. In the absence of specific clauses in the framework agreement or contract, the late payment penalties applicable by CNES, without any prior formal notice, shall be calculated using the following general formula:

$$P = \frac{V \times R}{3\,000}$$

Where,

P is the amount of the late payment penalty; it is not capped.

V is the amount specified in the framework agreement or the contract on which the penalty is applicable or, by default, it is the total amount of the contract.

R is the number of days of delay counted without initial neutralisation or limitation in duration.

The framework agreement or the contract may stipulate a different method of calculation or a pre-determined amount of penalty per day late.

The delay subjected to penalty shall be specified in the schedule of payments in the tender or the purchase order. In the case of the absence of specific clauses, the delay specified in the schedule of payments shall be considered for penalty.

If the event subject to penalty is not entitled to payment, late penalties, if any, are deducted from the payment of the following event.

When the prices are subject to revision, the initial values of the penalties shall also be revised under the same conditions as the payment amounts.

Irrespective of the GATC referred to in the terms and conditions, the contractor, due to any untoward incident beyond its control is unable to meet the contractual time limits, may request deferment in delivery or execution of the service. This request must be sent to the address mentioned in the Standard CLAUSES article within a maximum of 20 days following the occurrence of the event causing the delay; the request must not notify an event occurring after the contractual time limit of delivery or execution of the service.

ARTICLE - VIII. TECHNICAL ASSESSMENT

The assessment of services shall be carried out by the agents of CNES or any other organisation authorised for this purpose.

The objective of this assessment is to verify the conformance of the services with the technical provisions of the contract.

To this effect, CNES shall have free access to the premises (workshops and laboratories) of the contractor and their sub-contractors.

The intervention of the CNES and the authorised organisations do not alter the responsibility of the contractor which remains intact.

ARTICLE - IX. ASSESSMENT OF PRODUCTION COSTS

Under the conditions specified by the GATC under the framework agreement or the contract and conforming to the Article 54 of the French Financial Act of 1963 (No. 63-156 of 23 February, 1963) the contractor shall provide CNES, if they so request, with complete information on the technical and accounting details concerning the production costs of the services subject to the contract.

In this context, the contractor may notably be requested to provide the balance sheets, income statements and accounting records, or, in their absence, all relevant documents pertaining to production costs.

The contractor has the obligation to provide and facilitate CNES, or any other organisation representing it, in the verification of elements, or on-site, for the accuracy of the information.

ARTICLE - X. DISPUTES

If any dispute arises in the interpretation or execution of the contract, the parties shall endeavour to settle them out of court before taking recourse to any legal action.

In the case of any persisting disagreement, the dispute is brought before the competent court.

ARTICLE - XI. RECEIVERSHIP AND LIQUIDATION

The ruling instituting the contingency procedure, legal receivership procedure or liquidation 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 procedures or legal receivership without an administrator, pursuant to Article L621-4 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 the Article L622-13 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 renounce execution of the contract or on the date when the one-month time period lapses. This shall not entitle any compensation to the contractor.

In the case of liquidation proceedings, termination of the contract shall be pronounced unless the ruling specifically authorises continued activity of the organisation. In this case, CNES may agree to continue the contract for the period specified in the ruling or terminate the contract without any compensation to the contractor.

ARTICLE - XII. COMPLIANCE WITH THE PROVISIONS OF THE FRENCH LABOUR CODE

By signing the contract, the contractor or its authorised representative confirms, at the risk of termination of the contract, that all services provided or sub-contracted by it conform to the provisions of the French Labour Code related especially to:

- Illegal labour
- Health and safety
- Use of foreign manpower.

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 their sub-contractor in this respect.

Furthermore, any exemptions granted to the contractor or one of its sub-contractors from the applicable law or if the contractor wants to establish its own authority in this regard must be reported to CNES.

The contractor shall send, every six months from the date of notification of the contract, the documents specified in the Articles D 8222-5 and D 8222-7 to D 8222-8 of the French Labour Code, under the penalty of termination of the contract by the CNES based on the contractor's fault alone, if the contractor is found guilty of an offence, after issuance of a formal notice.

ARTICLE - XIII. SITUATION WITH RESPECT TO THE AUTHORITIES

By signing the contract, the authorised representative of the contractor confirms, under penalty of termination of the contract, the accuracy and completeness of the information provided, as listed appears in the Articles 17 and 18 of Decree No. 2005-1742 dated 30 December 2005.

ARTICLE - XIV. ENVIRONMENTAL MANAGEMENT FOR CONTROLLING THE ENVIRONMENTAL IMPACT OF DELEGATED ACTIVITIES

XIV.A. General provisions

The contractor shall take all appropriate measures to control the elements that are likely to impact the environment and shall ensure the health and safety of individuals as well as the preservation of the surroundings.

In addition to the provisions and legal requirements and regulations on prevention of occupational health and safety risks, CNES requires the contractor to take measures to preserve the environment as specified in the agreement or the contract. The contractor shall agree to abide by the terms.

On specific request from CNES, the contractor, during the execution of the contract and during the period of guarantee for the services delivered and / or executed, must be able to prove that the services comply with the environmental requirements specified in the contract.

XIV.B. Specific provisions 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 the conditions of use applicable to these substances (restrictions and authorisations), Contractors must:

- Inform CNES of the facts and details that are to be made known, especially in terms of the risk of probable change in classification of chemical substances in relation to restriction or authorisation conditions,
- Take all necessary measures in order to guarantee to CNES, perfect compliance with all provisions applicable to the REACH regulation,
- Provide data or safety information necessary for using the chemical substance, preparation or items,
- Undertake all necessary measures to ensure the protection of its employees, those of CNES and other industrial partners present on the site, especially in terms of establishing prevention plans specified under the labour code.

Before work commences, the contractor shall communicate the contact information of the person responsible for applying the REACH Regulation for its organisation and for the establishment specified in the contract, to the CNES technical manager as nominated in the contract.

XIV.C. Specific provisions applicable to contractors outside the European Union

Contractors outside the European Union who manufacture a chemical substance or content in a preparation or an item, who formulate a preparation, or produce an item imported into the European Union shall designate an exclusive representative, in conformance with the provisions of REACH. This representative shall respect all the obligations applicable to importers.

For the supplies that must be provided under the contract, the contractor ensures that the intended use of the supplies under the framework agreement or contract is registered under the provisions of REACH. The contractor shall notify this registration to CNES before commencing the execution of the contract.

XIV.D. Risk analysis

The contractor undertakes, throughout the duration of the contract, to conduct risk analysis commensurate with the considerations of the contract and to integrate this approach and its results to the project risk management. This analysis shall mainly consist of identifying from the list of substances established by the contractor, those which, in the context of environmental regulation, are critical for the project and the actions to be implemented to limit the impact on the project in terms of performance, cost and time.

OPTIONAL CLAUSES

ARTICLE - XV to 0

ARTICLE - XV. INTELLECTUAL PROPERTY

XV.A. The framework agreement or the contract indicates, through reference to the general administrative terms and conditions relating to intellectual property (CCAGPI) or Chapter VII of the general administrative terms and conditions relating to industrial contracts (CCAGMI), the clauses applicable to the contract, with the specifications, modifications or amendments, if any.

XV.B. At the end of the execution of the contract, the contractor must deliver to CNES a list of all the know-how acquired as well as any inventions made during the execution of the contract and their mode of protection and property rights.

XV.C. PROVISIONS RELATING TO SOFTWARE

XVC.1. Definitions

The term software as used hereafter in the following provisions refers to a specific software package.

Specific software refers to all software developed at the request of CNES to meet a requirement that cannot be satisfied by a standard product already produced and commonly called a software package.

This definition applies to software and software tools developed from scratch as well as that obtained by adapting existing software.

Existing software refers to software or a software package for which the contractor owns all or part of the rights.

The free or shared software (freeware and shareware) are considered under these SATC as not for appropriation and therefore cannot be subject to any transfer of rights.

XVC.2. Regulation in relation to software developed entirely and independently of any existing software by the contractor for and at the expense of CNES

a) It is understood that the software comprises, in general, the elements, including but not limited to, any types of media such as programs, manuscripts, lists and other programming documents developed for CNES by the contractor under the contract, whether in written or any other form readable by man or machine. The software and associated elements shall become the property of CNES. Subsequently, the contractor undertakes to deliver to CNES the source code and the object code of the software accompanied by all the documentation stipulated in the contract, including but not limited to, all the documents of specification, architecture and usage.

b) The contractor shall transfer to CNES, for these software and elements, all the copyrights that are conferred by the Law and the other property rights that he holds on these software and elements, including but not limited to, the rights of use, reproduction, communication, representation, translation, adaptation, modification, reformulation, arrangement and any other transformation including the rights of industrialisation, distribution, commercialisation and sub-licensing to a third party under any capacity whatsoever, free or otherwise, as well as the right to undertake in its own name any formality for obtaining or preserving the rights thus assigned. The assignment shall be applicable world-wide for the entire term of the copyright.

Unless otherwise agreed, the contractor further agrees not to publish, reproduce, adapt or otherwise use or market the software and elements whose rights are assigned to CNES.

It is understood that any deviation from these provisions must be subject to the prior consent of CNES, and a special contract must be drafted to lay down the conditions for the concession of rights and the royalty amounts in the event of marketing the data.

XVC.3. Regulations in relation to software developed by the contractor for CNES, from any existing software and/or co-financed by the parties

The existing software represents a contribution in kind by the contractor when it constitutes an element integrated into the software ordered by CNES; on the contrary, it does not represent contribution in kind if it is used as a tool for executing the service, but is not incorporated into the software.

The distribution of copyrights on the software developed and the associated elements shall be determined based on the contractor's financial contribution or contribution in kind.

- a) The contribution of the contractor is only financial or involves contribution in kind such as number of hours of calculation or programming or number of instructions written, evaluated in terms of hourly rates or accounting units. If the amount of this contribution thus evaluated as a sale price excluding taxes is less than or equal to 25% of the software's market share, the provisions of Article XIV.C.2 shall be applicable.
- b) In the event that the contribution of the contractor, under this article, is greater than 25% of the software's market share, the contractor shall continue to own copyrights on the software developed as conferred to it by the Law. However, the contractor shall concede to CNES, for the software developed, a free non-exclusive license under which CNES shall have a right of use, reproduction, representation, reformulation, translation, adaptation, modification, arrangement and any other transformation and communication to third party for its own needs. CNES may also, for its own needs, sub-license to third parties for free. The assignment of rights shall be applicable world-wide for the entire term of the copyright. CNES shall take all necessary measures with the third parties to protect the rights of the contractor.

The complete exercise of the rights thus conceded shall involve delivery to CNES, by the contractor, within the limit of its rights, of the source code and object code of the software developed, along with any documentation stipulated in the contract, including but not limited to, all the documents relating to specifications, architecture and usage.

If the contractor decides to market the software developed, it shall first inform CNES, so that the parties may reach a mutual agreement on any royalties payable thereto depending in particular on the amount of each party's contribution.

In the event the contractor does not want to market the software developed, he shall inform CNES, in writing, such that the latter may do so in its capacity. The parties shall agree on any royalties payable to the contractor depending in particular on the amount of each party's contribution.

XVC.4. Regulations on the software developed or adapted by the contractor entirely at its expense

On the software developed or adapted, from its own existing software at its expense, the contractor shall retain all the copyrights and property rights conferred to it by the Law. On the software developed or adapted, to the extent required for the execution of the contract and within the limits implied by it, the contractor concedes freely to CNES a right of use, reproduction, translation, modification, adaptation, arrangement and any transformation, reformulation, representation and communication to third parties. CNES may also, for the execution of the contract, sub-license to third parties for free.

The complete exercise of the rights thus conceded involves delivery to CNES, by the contractor, of the source code and object code of the software developed or adapted, along with any documentation stipulated in the contract, including but not limited to, the documents concerning specifications, architecture and usage.

Outside the scope of the contract, any other use adaptation, modification, reformulation, representation, communication to third parties, reproduction or translation of the software must be subject to prior authorisation of the contractor.

XVC.5. Regulations for software and software packages developed by a third party outside the scope of the contract and required for its execution

This software, required for the execution of the contract, is subject to the assignment of rights of use, adaptation, reproduction and translation to CNES and in conformity with its requirements. The contractor shall procure the corresponding license (including the updates) negotiated after consulting CNES, from the property rights holder or their representative. The contractor shall guarantee CNES against any infringement upon exercising the conceded rights. Furthermore, the contractor shall take all the steps to preserve the rights of CNES if the property rights holder or their representative cease operations or stop the maintenance of these software or software packages.

XVC.6. Gradual or successive assignment of rights

In the case of a framework agreement, or a contract comprising purchase orders or tranches, assignment of rights shall take place, as required, at the completion of each specific contract issued in accordance with the framework agreement, each tranche or each purchase order. In such a case, the execution of a tranche or a purchase order in accordance with the specific contract issued as part of the framework agreement, must include the partial inventory of the software parts that are subject to the assignment of rights. Each intermediate assignment of rights is similar in nature and extent to the blanket assignment included in the framework agreement or the contract.

In addition to the provisions included in the GATC as per the tender, the contract termination pursuant to the 0 hereafter implies that the services already carried out will be subject, in favour of CNES, to the assignment of rights as provided for in the framework agreement or the contract.

XVC.7. Inventory of software or software packages

All the software or software packages that are developed or used, in any capacity whatsoever, in the execution of the contract, are listed in an inventory appended to the framework agreement or the contract, so that they may be indisputably identified.

The complete inventory of the software or the software packages must be provided by the contractor no later than by the end of the contract.

XV.D. PROVISIONS PERTAINING TO AUDIOVISUAL PRODUCTIONS

The contractor, producer of the audiovisual work commissioned by CNES, will undertake to procure on its behalf the assignment of operating rights required in view of their reassignment to CNES, from all the co-authors of the above-mentioned work, in such a way that the latter acquires the status of a legitimate user at the end of the contract.

The rights of use that are thus transferred by the contractor and the terms and conditions for exercising the same shall be the subject of specific provisions in the framework agreement or the contract.

XV.E. PROVISIONS PERTAINING TO THE DATABASE

XVE.1. Definitions

The term database used in the provisions below refer to the entire set of works, data or other independent elements that are arranged systematically or methodically and are individually accessible electronically or by any other means.

It shall be understood that in general the database contains elements including, but not limited to the media whether they be manuscripts, lists, programmes, lines of code prepared for CNES by the contractor as part of the contract, whether they are written or in any other form legible by man or machine as well as the tools including the software required for its functioning.

Consequently, when the contractor undertakes to provide a database to CNES, he undertakes to deliver the latter along with all the documentation described in the contract, especially, but not limited to, all the documents concerning specifications, architecture and use as well as, if required, the tools along with the software to access the data contained in the database.

The term database producer is used to refer to the person who takes the initiative and the risk of the investments required to create and develop a database.

XVE.2. Data statute

The contractor undertakes to respect the confidentiality of the data or the other elements that are not copyright protected and are sent to it by CNES and to use them only as required to create the database.

The contractor guarantees CNES against any third party claims pertaining to the exercise of their literary, artistic or industrial property rights for the works, data or other elements that may be subject to copyright and may be used by the contractor in the database, especially during its creation, use, reproduction, communication or representation to the public by CNES.

XVE.3. Rights statute

XV.E.3.1. Database developed and paid for by CNES

CNES is the only producer of the database developed on its behalf at its expense. The term producer denotes the person who takes the initiative and the risk of the related investments, as per the article L341-1 of the French Intellectual Property Code. Consequently, apart from the copyright, it enjoys free rights to use the contents of the database and holds the rights pertaining to this position.

In particular it has the right to prohibit:

1. The extraction, via permanent or temporary transfer of all or a qualitatively or quantitatively substantial part of the database content to another medium, through any means or in any form;
2. Reuse, by making all or a qualitatively or quantitatively substantial part of the database content available in any form.
3. Repeated and systematic extraction or reuse of qualitatively or quantitatively non-substantial parts of the database content when these operations openly exceed the normal usage conditions of the database.

These rights may be transferred, or assigned or be subject to a license. It is understood that any deviation from these provisions must be subject to the prior consent of CNES, and a special contract must be drafted to lay down the conditions for the concession of rights and the royalty amounts in the event of marketing the data.

The rights mentioned above come into effect either:

- On the date of completion of the database,
- On the date when it is made available to the public,
- Or on the date of the last substantial investment made by the producer.

They expire fifteen years after January 1st of the calendar year that follows the year in which the rights were accorded.

If it is not possible to ascertain with precision the date of completion of database creation or the date on which it was made available to the public or the date of the last substantial investment, CNES and the contractor consider that these shall correspond to the date of receipt of either the aforesaid database by CNES or the work involved to make it available to the public or the work resulting from the last substantial investment.

CNES may grant the Contractor, following its request, a license according to which the Contractor shall be vested one or more of the following rights: extraction, use, reuse, adaptation, reproduction and translation of the database content. The terms and conditions, especially financial, of this license shall be negotiated on a case by case basis.

XV.E.3.2. Database developed for CNES with the expenses shared by CNES and the contractor

The position of the producer of the database developed on behalf of CNES is determined according to the contribution of the contractor, financially or in kind. The contribution amount of the contractor is mentioned in the tender. In the case of a contribution in kind such as, in particular, hours put in by the engineer or the software professional, data etc., it is set out in the contract so as to specify its extent and nature and is evaluated according to the hourly rates or the units of accounting.

a) CNES as producer

If the amount of the contribution thus evaluated in sales price, excluding taxes, is less than or equal to 40% of the development part of the database included in the contract, CNES shall be considered the producer of the developed database. Consequently, it shall enjoy free user rights on the contents of the database and shall hold the rights pertaining to this position as per the provisions set out in XV.E.3 above.

CNES shall then undertake to grant the Contractor, upon its request, a free license according to which the Contractor shall be vested with the right to extract, use, reuse, adapt, reproduce and translate the contents of the database for its own requirements. Any request for marketing the data shall be subject to a specific approval.

b) The Contractor as Producer

As per the present article, if the contractor's contribution is more than 40% of the development part of the database included in the contract, the contractor shall be considered the producer of the developed database. Consequently, he shall enjoy free operating rights on the contents of the database and shall hold the rights pertaining to this position as per the provisions set out in XV.E.3 above.

If the contractor markets the database, being its producer, he undertakes to pay CNES a part of the royalties that he receives from the marketing, according to the contributing amount of CNES.

The Contractor shall then undertake to grant CNES, upon its request, a free license according to which the CNES shall be vested with the right to extract, use, reuse, adapt, reproduce and translate the contents of the database for its own requirements.

XVE.4. Database inventory

All the databases that are developed or used in any capacity whatsoever are listed in an inventory appended to the framework agreement or the contract on executing the contract, so as to identify them indisputably.

The complete inventory of the databases must be provided by the contractor no later than by the end of the contract.

XV.F. PROVISIONS PERTAINING TO PATENTS FROM RESEARCH PHASES AND UPSTREAM DESIGN FINANCED OR COFINANCED BY CNES

The following provisions pertain to the patents from only:

- Research phases and upstream design: R and T phases, O phases and A phases (limited to the feasibility studies and the exploratory phases) financed or co-financed by CNES with the industrial partners;
- B phases under the assumption that they form a part of the research and upstream design as defined above, given that a specific analysis must then be conducted on the work packages in question.

Each Party undertakes to inform the other in the case of an invention devised during the execution of the present contract, via registered mail with acknowledgement of receipt.

→ Case of patentable inventions:

- Before filing for a patent, each Party must offer joint ownership rights for the invention to the other Party, via registered mail with acknowledgement of receipt.

If the other Party wishes to become a joint owner and responds positively to the proposal within the span of a month from the date of receipt of the registered letter with acknowledgement of receipt, the filing of the patent application shall be carried out jointly after negotiating the terms of a joint ownership agreement. The agreement shall lay down the terms and conditions of management, use, assignment of the share in co-ownership and the financial conditions for using the patent. In this regard, it shall specify the conditions for calculating the royalties to be paid by the contractor to CNES on a case by case basis and its degressive conditions. In the event that CNES also uses the patent, a symmetrical clause shall be negotiated.

The distribution of the share in co-ownership is determined in proportion to the respective contributions by the Parties (in kind, financial, etc).

- If one of the Parties does not wish to participate in filing for the patent, he must inform the other Party within a span of a month from the date of receipt of the registered letter with acknowledgement of receipt so that the latter may submit the invention in its own name and at its own expenses.

No response from the concerned Party shall be interpreted as a refusal to participate in the submission. In such a case, the property shall be devolved exclusively to the party who filed the application in its name and at its own expenses. The Party who withdraws undertakes to sign or to have all the documents signed to authorise the other party to become the sole owner of the patent. The Party that filed the application shall confer a license to the other Party to use the aforementioned patent based on conditions to be negotiated between the two parties.

→ Case of confidential inventions:

If CNES or the Contractor do not wish to apply for a patent, for strategic reasons, a confidentiality agreement shall be drawn up between CNES and the Contractor in order to protect the invention, as well as an agreement governing the payment of royalties to CNES in the case of future commercial use of the said invention or of any part of it.

XV.G. PROVISIONS PERTAINING TO RESULTS

The concept of “results” encapsulates all the works protected by the copyright law, created by the contractor as part of the execution of the present contract, except for the software.

The CNES can freely use the results, even partial, of the services. The contractor shall confer to CNES the rights to operate, reproduce, represent and use all the results in all possible ways, freely, as and when the execution phases are completed, for the entire duration of the protection accorded to the works in all the countries where the protection may be obtained within the confidentiality constraints pertaining to the prior commitments of the contractor in the technical field, stipulated in the ARTICLE - XXXIV given below.

ARTICLE - XVI. EVALUATION OF RESULTS FOR THE BENEFIT OF OTHER INDUSTRIAL SECTORS

XVI.A. The contractor undertakes to make every effort to evaluate the results and know-how acquired during the execution of the contract, in industrial sectors other than the aerospace sector.

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

XVI.B. As part of the contract, the contractor undertakes to send an evaluation sheet in duplicate copies, one (the original) to the department mentioned on the sheet and the other (duplicate) to the engineer in-charge mentioned in the contract:

- An evaluation sheet drafted according to the model attached to the framework agreement or the contract, every 12 months unless the execution period is less than 24 months, starting 12 months after the notification.
- A separate sheet shall be drafted for each of the main industrial sub-contractors (the sheet may be prepared and sent directly to CNES by the subcontractor in question) and a general sheet for all the other services.
- 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 framework agreement or the contract.

XVI.C. If the contractor has not obtained any positive results from the evaluation actions (especially technology transfer) within a period of two years after the date of termination of the contract and if CNES feels that some of the 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.

XVI.D. The provisions of ARTICLE - XVI to - shall also be applicable to subcontractors other than those whose service is limited to just supply. The sub-contracts issued by the contractor under the contract must mention this incentive.

ARTICLE - XVII. LIABILITY – INSURANCE - DAMAGE

XVII.A. The contractor shall be liable for any damage or destruction of equipment or supplies (data, software, reports etc) that he manufactures as part of the contract, until the date of delivery and for any action performed during the warranty period after the delivery. He shall also be responsible for the equipment or supplies (data, software etc.) provided by the CNES, that he handles directly or that he accesses to execute the contract, irrespective of whether it is in its own premises or on CNES premises.

XVII.B. The contract notification shall subject to the contractor's submitting to CNES the original copy of a valid insurance certificate that guarantees its civil liability against accidents or damage of any kind caused by it or by its subcontractors during the execution of the contract.

The certificate issued by an insurance company shall include the following information in particular:

- Identity of the company,
- Number, type and date of effect of the policy(-ies),
- Insurance cover provided and the amount,
- Various deductible amounts provided.

The contractor undertakes that the insurance policy (or policies) in question shall continue to apply for the duration of the contract, including the warranty period.

XVII.C. Damage of any kind, caused to CNES staff or the contractor involved in the execution of the contract, shall remain the responsibility of the respective parties even if the responsibility lies with the other party, except for gross negligence by the latter.

This provision shall not be invoked for accident victims, their beneficiaries and social security agencies.

ARTICLE - XVIII. DISPATCH, FORMAT AND ACCEPTANCE OF TECHNICAL DOCUMENTS

XVIII.A. Dispatch

All technical documents (study reports, calculation notes, drawings etc.) drafted as per the number of copies stipulated in the framework agreement or the contract, must be sent, unless specified otherwise in the tender, to the technical manager of the contract at:

CENTRE NATIONAL D'ETUDES SPATIALES
(at the address specified in the tender)

The procedures for drafting these documents, drawings in particular, are specified in the framework agreement or the contract.

XVIII.B. Format

The media on which technical documents must be submitted (hard copy, floppy disk, CD-ROM etc.) to facilitate classification and archiving, are determined in the framework agreement or the contract. In the absence of specific clauses in the framework agreement or contract, the contractor must submit the soft copy of the technical documents in the same format as that of ECSS-M-50B, unless specified otherwise in the agreement or the contract.

XVIII.C. Acceptance

CNES reserves a period of 30 days from the date of receipt of the documents to accept or refuse them, communicate its observations and to request, if required, additional study as part of the technical specifications in the contract.

ARTICLE - XIX. RECEIPT OR ACCEPTANCE OF EQUIPMENT, SUPPLIES OR SERVICES

The receipt or acceptance shall be declared after verification. This shall mainly involve checking, as per the specifications and additional information that may be included in the special Technical Terms and Conditions:

- Quantitative and/or qualitative compliance of the equipment, supplies or services with the specifications, including functional and quality assurance specifications,
- Compliance of the documentation with respect to the equipment, supplies or services and the quality assurance specifications,
- Compliance of the materials, supplies or services with respect to the operating manual,
- Provision of safety information required to install and eliminate the equipment, supplies (including packaging) and the data for registering the substances,
- Proper completion of the acceptance tests defined below in conformity with their specifications as set out in the contract.

XIX.A. Acceptance tests at the factory

The acceptance tests of all the equipment and supplies and their sub-units shall be carried out in the factories of the contractor or of its accepted subcontractors.

The contractor must submit the acceptance and measurements procedure guidelines, for approval from CNES, at least a month before the start of the acceptance operations.

The contractor must confirm the date and place of presentation for the factory acceptance tests, at least 8 days in advance by letter or fax to CNES.

All the resources used for the acceptance tests shall be at the expense the contractor.

If CNES decides not to send a representative, the tests shall be conducted as scheduled and the results mentioned in the test report shall be binding.

CNES may accept or refuse the factory acceptance test based on the measurement results conforming to the technical specifications and / or the acceptance and measurements procedure specifications.

XIX.B. On-site acceptance tests

Acceptance operations shall be carried out on-site as per the procedure set forth in the technical specifications. The location is specified in the framework agreement or the contract.

XIX.C. Final acceptance tests

The final acceptance tests shall be notified twelve months after the acceptance tests at the factory or on site, on condition that the level of performance of the equipment remains within the fixed limits.

ARTICLE - XX. DELIVERY OF EQUIPMENT OR SUPPLIES

XX.A. Any CNES centre or site except Centre Spatial Guyanais, the Guiana space centre (CSG).

1. The supplies and equipment in suitable commercial packaging for transportation, along with any documentation as required, shall be delivered to the address specified in the OPTIONAL CLAUSES article.
2. The contractor shall provide a detailed evaluated inventory of the supplies and the equipment on delivery and hand-over to CNES.
3. The packaging and freight charges (inclusive of insurance) shall be included in the contractual prices.
4. The contractor shall be responsible for all the handling and lifting equipment required at the company premises for the smooth running of the work; their cost is included in the contractual prices.

XX.B. At the Centre Spatial Guyanais (CSG) and borne by the CNES

1. The supplies and equipment in suitable commercial packaging for transport shall be removed by CNES or its representative, in the factory or at the contractor's workshops.
2. The contractor shall provide a detailed evaluated inventory of the equipment conforming to the model sent to the contractor on their request, on delivery and hand-over to CNES.
3. The transport and delivery thereof to CSG shall be carried out by CNES, at its expense and under its responsibility. It shall be organised and coordinated by the forwarding agent authorised by CNES and mentioned in the OPTIONAL CLAUSES article.
4. The contractor shall be in charge of the requests and relations required with the forwarding agent, especially to submit to them, on time, all documents explaining the condition of the supplies and the equipment expected by the customs administration.

XX.C. At the Centre Spatial Guyanais (CSG) and borne by the contractor

1. The supplies and equipment in suitable commercial packaging for transportation shall be transported from the workshops of the contractor or its subcontractors' to CSG at the contractor's responsibility and expense.
2. The contractor shall provide a detailed evaluated inventory of the equipment conforming to the model sent to the contractor on their request, on delivery and hand-over to CNES.
3. The contractor shall be responsible for all the handling and lifting equipment required at the company premises for the smooth running of the work; their cost is included in the contractual prices.
4. If the contractor contacts the forwarding agent authorised by CNES mentioned in the OPTIONAL CLAUSES article and in order to coordinate the transport, it must provide CNES and their forwarding agent an estimate relating to transportation requirements three months and one month in advance.

ARTICLE - XXI. TRANSFER OF OWNERSHIP

The framework agreement or the contract specifies the verification operation (or operations) to declare the receipt or acceptance of the work, supplies or services upon their completion and for transfer of ownership once the contractor has fulfilled its obligations on the specified date:

- a) Acceptance tests at the factory
- b) Delivery
- c) On-site acceptance tests.

A receipt or acceptance certificate shall be drawn up to this effect.

ARTICLE - XXII. WARRANTY

XXII.A. Warranty of the equipment

a) Scope

The supplies shall have a warranty of one year against any malfunction from the date of their receipt, including all the components, as required. The warranty shall extend to parts, labour and transportation included. It shall include the update of the documentation in question, if required.

b) Conditions

During the warranty period, the features of the equipment must remain within the limits specified in the technical clauses in the contract or, if no such clauses are specified, within the limits specified by the manufacturer. However, it is understood that the equipment shall be kept in normal conditions of functioning and use.

c) Terms of application

This warranty shall include the replacement or repair by the contractor of appliances or parts found to be defective, at the choice of the contractor and at its expense.

If an appliance is found to be defective during the warranty period, a report on findings shall be prepared by CNES. The findings recorded in the report shall be deemed acceptable by the contractor if their representatives were unable to be present for the declaration due to the urgency of the matter.

If the equipment is in mainland France, the contractor undertakes to repair it within a period of 8 clear days. If a contractor's technician is required to travel to carry out the repair, the ensuing costs are to be borne by the contractor.

If the equipment is exported, the replacement of the parts deemed defective may be carried out according to *three* procedures:

- CNES may return the equipment to the premises of the contractor and the warranty shall apply as specified above; a period of eight days shall be counted from the date of delivery at the contractor's premises. The latter shall not be required to provide CNES with similar equipment at the place of export, if the turnaround delay is longer.
- Or, CNES is authorised by the contractor to carry out the repair or have it done under its supervision for defects that are deemed to be minor. In such a case, the contractor shall not be relieved of its responsibility unless the repair was not carried out as per the maintenance manual or the written instructions received to this effect. A report from the CNES engineer in charge shall be sent to the contractor when the repair is completed. If the contractor does not approve of this substitution, it shall be free to send one or more representatives to the location at its expense.

- Or, the repair or replacement of the equipment may require one or more representatives of the contractor to travel. In this case, the travel or conveyance charges are to be borne by the contractor who undertakes to take action on site within a maximum period of eight clear days.

If the contractor can prove that the equipment was not operated correctly under normal conditions of functioning and use, they shall be reimbursed for the parts, the work and the additional expenses (including travel) on producing receipts accepted by CNES.

d) Replacement of defective parts

If it is found during the warranty period that a systematic failure is affecting the supplied equipment and that ten percent of the parts of a model (with at least 2 breakdowns) had the same defect, CNES shall be entitled to request replacement of the defective parts for all the equipment.

The new equipment or spare parts shall be received; the report prepared by CNES agents or their representatives shall note the replacement and its date for each item of equipment designated by its number. The date of exchange shall be the start of a new warranty period of a year for the exchanged equipment.

XXII.B. Warranty of the software

a) The contractor shall provide a warranty for the software for a period of twelve months from the technical incident specified in the framework or the contract. The software warranty shall cover the free correction of any malfunction indicating a difference between the delivered product and the specifications, duly noted by CNES. The warranty shall include the update of the documentation in question.

b) Actions as part of the warranty are carried out within a period specified in the framework agreement or the contract, on request from CNES, stating the reasons therefore.

Actions as part of the warranty do not lead to the extension of the latter. The warranty is cancelled ipso jure if the modifications or additions are effected without prior written permission from the contractor.

ARTICLE - XXIII. CONTRACTOR UNDERTAKING FOR MAINTENANCE

a) At the end of the warranty period, the contractor undertakes to carry out the maintenance of the systems, hardware or software ordered as part of the contract as per the terms specified in the framework agreement or the contract, on request from CNES.

b) the financial terms of this maintenance are specified in the contract or are derived from the price lists submitted by the contractor and accepted by CNES.

c) The framework agreement or the contract determine the duration of the commitment.

ARTICLE - XXIV. SPARE PARTS

For a period of ten years from the date of receipt, the contractor undertakes to:

- . Provide parts manufactured by them,
- . Cater to CNES's requirements with regard to parts subcontracted or bought from the catalogue,
- . Specify, if the original parts are no longer available, equivalent parts for replacement and, if required, carry out the required adaptation studies for the materials that they have ceased to manufacture.

However, CNES reserves the right to directly procure spare parts without going through the contractor, except during the warranty period. Upon this assumption, the references of the original or spare parts shall be sent to CNES on request.

The spare parts and any adaptation studies that the contractor may provide as per the provisions of the present article are not included, unless specified otherwise, in the contract price and will require special purchase orders, contract or orders.

ARTICLE - XXV. HANDOVER OF SERVICES

At the end of the contract including in the case of early termination and conforming to the provisions of the latter, the contractor shall ensure handover of services and make all efforts to enable CNES to take over the assigned services or have them taken over.

In this respect, the contractor must constantly act in such a manner as to ensure the services under their responsibility may be handed over in full. To do so, they must inform CNES about any change or development likely to significantly affect the objective they have committed to.

The contractor undertakes to transfer to CNES on its request, all items knowledge of which is required to take over the services. Furthermore, the contractor undertakes to hand over all the items (files, data, programmes, documentation, technical files, etc.) pertaining to the contract and created on behalf of CNES or belonging to CNES, at the latest on the date of termination of the contract. In addition, the contractor undertakes not to keep any copy of the aforementioned items. Similarly, all equipment and tools belonging to CNES must be returned either at its premises or at the premises of the industrialist taking over the services.

The contractor shall accept to set a handover period with the person taking over the services, during the last three (3) months of the contract. In this view, the contractor undertakes to provide access to this person or their representatives to the premises and documents used to perform the services. The contractor also undertakes to carry out the required presentations and practical training in the last three (3) months of the contract. The contractor is solely responsible for the proper execution of the services during this handover period.

A detailed handover process defining the terms for taking over the services shall be prepared by the contractor, at the latest within six months after the notification of award of contract, and accepted by CNES.

ARTICLE - XXVI. EQUIPMENT AND SUPPLIES MADE AVAILABLE TO THE CONTRACTOR

XXVI.A. Liability

If required for the execution of the contract, CNES shall provide the contractor with equipment and supplies (software, software packages, documents, etc.) that must be listed in a document appended to the framework agreement or the contract.

In such a case, in their capacity as authorised user, the contractor shall be entirely responsible for the equipment and the supplies from their provision noted in the report till their return to CNES, inclusive of transport.

XXVI.B. Insurance

XXVIB.1. The contractor shall insure the equipment and supplies at their expense against risks of any kind, with waiver of recourse against CNES, prior to their handover and as long as they remain with the contractor.

XXVIB.2. An insurance certificate shall be required prior to the return of the equipment or the supplies.

XXVI.C. Ownership of tools

Some equipment may be tools depending on the type of contract. Hence they shall be clearly identified in the contract and made available to the contractor, though they remain CNES property.

For tools whose contractual value is equal to or greater than 800 euros (exclusive of taxes), a detailed and evaluated inventory conforming to the model attached to the framework agreement or the contract is provided to CNES to draft a handing-over report. The contractor shall attach "CNES property" tags or stamp the equipment contained in the inventory.

XXVI.D. Situation upon termination of the contract

After executing the contract, the equipment and supplies referred to in the paragraphs ARTICLE - XXVI and XXVIB.2 shall either be returned to CNES within six months, or left at the contractor's disposal at a price determined by mutual consent or left at the contractor's disposal as part of a loan agreement. Signing of the loan agreement by CNES shall be subject to the provision of an insurance certificate pertaining to the loaned equipment and supplies.

ARTICLE - XXVII. CONSTRUCTION OR CIVIL ENGINEERING WORKS

The contractor shall arrange and be responsible for carrying out works or parts of works that CNES requires to be constructed or adapted.

XXVII.A. Execution of works

Construction plans (outside the technical research department)

The construction plans shall be prepared under the responsibility of the contractor based on the contract specifications and drawings and other documents verified by it.

The contractor shall ensure the accuracy of the dimensions and layout of the drawings and shall be in charge of monitoring them during the execution of the work.

During the study and prior to execution, the contractor must submit the drawings and calculation notes to CNES for approval.

Conditions for execution

The contractor must conform to the provisions of the "site regulations" for all matters regarding the execution of the work.

Supervisory inspection

CNES or any agency authorised by it shall monitor the progress and proper execution of the works at the construction site or, if required, at the factory.

The inspection is held to check the quality of the equipment and the compliance of the works with the technical clauses.

On-site installation

Unloading, delivery to the building site, storage of equipment and hardware and their installation, as well as their return and repair from the premises, shall be carried out by the contractor at its expense.

The contractor must perform the works in such a manner that access and water flows are maintained.

On completion of the works, the contractor must have cleared, cleaned and rehabilitated the area used for the construction site within fifteen days from the date of receipt notification. In case of delay, these operations shall be carried out at the expense of the contractor, after a formal notice by letter.

XXVII.B. Warranties

Start date of warranties

The date of receipt notification mentioned in the last paragraph of article 0 above is the start date of the contractual warranties and the legal warranties to be provided by the contractor as part of the contract.

Contractual warranty

Duration

The contractual warranty is valid for twelve months.

Deduction

The warranty deduction is 5% of the amount of the work; it can be levied against a bank security of the same amount (taxes included) issued by an institution authorised by the French Ministry of Economy. The bank security may be replaced at will by the contractor with a first demand guarantee or with a personal joint and several surety upon mutual consent of the two parties.

Scope

The contractual warranty covers all the works against any fault in equipment or defect in construction and design.

The contractor may under no circumstances make claims on CNES to modify its responsibility or be relieved of it with regard to, either

- The information provided to it by CNES,
- The acceptance of the provisions of the project by the contractor or the changes requested by CNES and accepted by the contractor,
- The inspection by CNES or one of its representatives.

Terms of application

The special terms and conditions for applying the contractual warranty involve providing free upkeep and proper maintenance of the works and the installations.

For this purpose, the contractor shall:

- Attend any meeting convened by CNES to examine the condition of works or the behaviour of material or equipment,
- Carry out all the inspection operations such as removal, checking, sampling, tests; the expenses and the risks are borne by the contractor if there is a defect and borne by CNES if no defect is detected,
- Perform all the operations and connections, give full leeway, carry out all the work deemed to be necessary or simply useful by CNES,
- Personally arrange for the intervention of any other building trade that may be necessary to return the work to its state of perfect completion after repair, including embellishments, improvements, coatings and linings that may have been added or applied by whomsoever possessed it when the contractor's intervention was demanded by CNES,
- Be liable for any legal actions that may have been made on account of the disturbances caused by the behaviour or the faulty state of the works and guarantee CNES against any such actions, except upon proving that the contractor's responsibility was not incurred.

The time limits required for the execution of the works or the services above shall be determined by mutual agreement. Failing this or if the work is not completed within this period, the works or the services may be executed at the expense and risk of the defaulting party after formal notice has gone unanswered.

XXVII.C. Responsibility - Insurance

The liability of the contractor may be incurred in the conditions described below:

Material and equipment put at the Contractor's disposal

The material, equipments and installations provided to the contractor by CNES as per the inventories and the inventory reports shall be placed in the custody of the contractor until they are returned.

Site equipment and supplies

The contractor shall insure the equipment and supplies at their expense against risks of any kind, with waiver of recourse against CNES, prior to their handover and as long as they remain with the contractor.

Comprehensive site insurance

CNES may contract, at its expense, on its behalf and that of the contractor, comprehensive site insurance; this policy, which is sent to the contractor, shall be applicable in the following conditions:

- In terms of exclusions, compensation for damage is settled as per the common law,
- In terms of excess, they are to be borne by the companies working at the construction site, pro rata as per the amount of their respective works, unless the liable company is identified.

Civil liability insurance for "personal injury and material damage"

The contractor shall take out insurance covering its civil liability for damage of any kind that may be caused by it and may cause material damage or personal injury to its staff, to CNES and its agents or to a third party, during the transport, the construction or the warranty period.

Legal construction insurance

The contractor must take out a basic individual policy, called a ten-year contractor or tradesman policy, for the works executed and covering the warranties due to CNES, the client, as stated in the articles 1792 and 2270 of the French civil code.

The contractor must take out complementary works insurance, if required.

Prerequisite for notification associated with producing the insurance certificates

An insurance certificate shall be sent to CNES when the contractor signs the contract. The notification of award of contract is subject to submission of this document.

XXVII.D. Safety and protection of the labour force

In compliance with the legislation in force, the contractor and the sub-contractors shall ensure the safety of the construction site, the workers and other persons that have to use the construction site and take all measures to maintain public safety in agreement with the CNES officials for occupational safety at the site.

The contractor and the sub-contractors shall constantly supervise the equipment and the materials used at the construction site.

ARTICLE - XXVIII. CONTRACTS INCLUDING WORK PACKAGES WITH PURCHASE ORDERS

The present article is applicable only to the contracts comprising several work packages of which a part is based on purchase orders.

XXVIII.A. Price, valuation factors, terms of payment, late payment penalties

The price of the contractor's services shall be determined at a flat rate or, as an exception, as cost-plus fees after negotiations between the CNES departments and that of the contractor before issuance of a purchase order. The proposals of the contractor shall be presented in 3 copies.

The framework agreement or the contract shall contain the information required to determine the final prices, in the form of price schedules if required; if the fees for the tasks is specified, as an exception, as cost-plus fees, the contractor shall furnish a detailed invoice with supporting documents if required.

Depending on the amount and the period of execution, the framework agreement or the contract shall determine the various conditions of payment (progress payments, final partial payments or balance payments) under which purchase orders are referred to later; a lump sum advance may be granted for each purchase order above 50 000 euros excluding tax, with a period of execution of more than two (2) months.

As per the framework agreement or the contract, when a purchase order contains several terms of payments, the latter shall be included in a schedule containing the nominal date, the amount and the technical or contractual phase of each event. This schedule shall be part of the purchase order.

The framework agreement or the contract shall also fix the terms for imposition of late payment penalties.

XXVIII.B. Issuance and execution

Issuance

The purchase orders shall be prepared based on the fixed price schedule appended to the framework agreement or the contract or the estimate of the contractor accepted by CNES for services that are not specified in the price schedule. By express agreement, dispatch of a purchase order shall enforce the agreement on the contractor, who nevertheless, has a time-frame of 10 days from the date of dispatch to express their observations. After this period, the contractor shall be deemed to have consented.

The contractor shall agree to provide the services or supplies, subject to the purchase orders:

- Each purchase order shall include the reference to the contract and shall specify:
 - ✓ Its subject, order number, date and if applicable, the quote reference,
 - ✓ The details of the services and supplies with a note, if required, on the technical specifications of their execution which must be provided as an appendix,
 - ✓ The valued list of the materials supplied,
 - ✓ Any documents, their number and format to be supplied,
 - ✓ The locations and special terms and conditions of execution, stating that the location of execution may be:
 - The premises of the contractor,
 - The premises of CNES,
 - Or as an exception, the premises of another technical centre, with an express agreement from the latter, whenever the special terms and conditions for execution of the service require; the agreement from CNES shall be time bound and is valid only for a specific service.
 - ✓ The fixed or provisional price or amount of the services and supplies, and if required in the latter case, all the elements required to determine the final amount,
 - ✓ The payment terms consistent with the general terms and conditions contained in the framework agreement or the contract,
 - ✓ The time limits.

Execution

All other terms pertaining to the execution of the services or supplies shall be specified, as required, in the framework agreement or the contract or the purchase order.

XXVIII.C. Last date for issuance of the purchase orders

The time limit or term of execution specified in the framework agreement or PURPOSE article of the tender of the contract for the purchase order work package(-s) shall be the last date for the issuance of the purchase orders .

ARTICLE - XXIX. CONTRACTS WITH PURCHASE ORDERS

The present article is applicable only to contracts comprising one or several work packages of which a set of work packages is based on purchase orders.

XXIX.A. Price, valuation factors, terms of payment, late payment penalties

The price for the services of the contractor shall be fixed at a flat rate before issuing a purchase order. The proposals of the contractor shall be presented in 3 copies.

The framework agreement or the contract shall contain the information required to determine the final prices, in the form of price schedules, if required.

Depending on the amount and the period of execution, the framework agreement or the contract shall determine the various conditions of payment (progress payments, final partial payments or balance payments) under which purchase orders are referred to later; a lump sum advance may be granted for each purchase order above 50 000 euros excluding tax, with a period of execution of more than two (2) months.

As per the framework agreement or the contract, when a purchase order contains several terms of payments, the latter shall be included in a schedule containing the nominal date, the amount and the technical or contractual phase of each event. This schedule shall be part of the purchase order.

The framework agreement or the contract shall also fix the terms for imposition of late payment penalties.

XXIX.B. Issuance and execution

Issuance

The purchase orders shall be prepared based on the fixed price schedule attached to the framework agreement or the contract. By express agreement, dispatch of a purchase order shall enforce the agreement on the contractor, who nevertheless, has a time-frame of 10 days from the date of dispatch to express their observations. After this period, the contractor shall be deemed to have consented.

The contractor shall agree to provide the services or supplies, subject to the purchase orders:

- Each purchase order shall include the reference to the contract and shall specify:
 - ✓ Its subject, order number, date and if applicable, the quote reference,
 - ✓ The details of the services and supplies with a note, if required, on the technical specifications of their execution which must be provided as an appendix,
 - ✓ The valued list of the materials supplied,
 - ✓ Any documents, their number and format to be supplied,
 - ✓ The locations and special terms and conditions of execution, stating that the location of execution may be:
 - The premises of the contractor,
 - The premises of CNES,
 - Or as an exception, the premises of another technical centre, with an express agreement from the latter, whenever the special terms and conditions for execution of the service require; the agreement from CNES shall be time bound and is valid only for a specific service.
 - ✓ The fixed or provisional price or amount of the services and supplies,

- ✓ The payment terms consistent with the general terms and conditions contained in the framework agreement or the contract,
- ✓ The time limits.

Execution

All other terms pertaining to the execution of the services or supplies shall be specified, as required, in the framework agreement or the contract or the purchase order.

XXIX.C. Last date for issuance of the purchase orders

The time limit or term of execution specified in the framework agreement or PURPOSE article of the tender of the contract for the purchase order work package(-s) shall be the last date for the issuance of the purchase orders .

ARTICLE - XXX. TERMINATION OF THE CONTRACT

If the contract is divided into phases, the amounts pertaining to various phases shall be fixed in the tender.

CNES may decide to terminate the execution of the contract at the end of one of these phases. The tender shall specify the terms and conditions under which this contract may be severed. Unless otherwise stated in the tender, no compensation shall be paid to the contractor under these circumstances.

ARTICLE - XXXI. TRAVEL

The travel for representatives of the contractor may be organised on written request from CNES, under the following conditions:

XXXI.A. Modes of transportation

The modes of transportation used shall be the same as those used by CNES representatives, considering the following specifications:

- private car

If a private car is used, the fixed rate for the mileage allowance shall be specified in the framework agreement or the contract.

- Rented car

The fiscal horsepower of the rented cars is limited to 5 Hp in metropolitan France.

The representatives of the contractor must car-pool to the maximum extent in the rented car.

XXXI.B. Amount

The amount for travel (transportation cost, daily allowances, any subsequent campaign allowances) shall be fixed as per the terms and the price scales applicable to the representatives of CNES at the time of travel. These terms and price scales shall be communicated to the contractor on request. No reimbursements shall be made directly to the representatives of the contractor.

XXXI.C. Travel time

The time spent on travel is considered as productive work time, at the rate of maximum eight hours in France, in Europe and abroad, and at the rate of ten hours for travel to and from Guiana.

ARTICLE - XXXII. CONDITIONS OF ACCESS TO CNES PREMISES

XXXII.A. General provisions

the contractor, for the execution of the services, shall abide by the obligations of the laws and regulations related to the protection of the labour and working conditions, in particular articles R 4511-1 and follow the French labour code (prevention plan) and the order dated 26 April 1996 (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 sub-contractors that the obligations specified in the previous paragraph also apply to them; and the contractor is also responsible to ensure 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 security problems ("Security manager", etc.),
- Nature of the work that may be sub-contracted,
- Name or corporate name of any sub-contracted 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:

- Compliance status of the "tools" used: Equipment, materials, lifting and material handling methods (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 meetings that follow. 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 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 filled accident declaration form (name, age, nature of the injuries, circumstances of the accident),
- . At the end of each quarter, the average number of the 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.

XXXII.B. Specific provisions

At the Toulouse Space Centre, there is an " Association for the development of the health and safety of organisations working at Toulouse Space Centre" whose objective is to assist the organisations to meet their legal and contractual obligations in these areas.

The contractor undertakes to join the association; they shall inform CNES of the date of effective membership which must be on notification of the contract at the latest.

All these provisions form a contractual obligation required for the proper execution of the service.

ARTICLE - XXXIII. DIRECT PAYMENT TO SUB-CONTRACTORS

Direct payment by CNES to accepted sub-contractors, the payment terms and conditions of which have been approved, shall be according to the following terms:

XXXIII.A. Invoicing by the sub-contractor

The sub-contractor shall send an invoice to the contractor for the services executed. It shall address to the contractor the original statement or the invoice along with a duplicate (the original is addressed to the contractor; the duplicate, addressed to CNES, specifying that the VAT invoiced by the sub-contractor is not deductible by CNES).

XXXIII.B. Acceptance by the contractor

The payment of advances, progress payments and the balance amounts to the sub-contractor shall be subject to the acceptance of the contractor. This acceptance shall be given in the form of a comment on the invoice from the contractor (ref. infra § 0) or as a separate document, attached to the copy of the invoice or statement of the sub-contractor (ref. supra § 0). The amount to be paid shall be specified in this reference. The payment shall be made based on the amount accepted as a deduction of the amount due to the contractor.

In case of a sub-contractor of a joint-contractor, the acceptance must be given by the latter and by the representative of the pool. The payment is made by deducting it from the amount due to the joint-contractor.

The contractor or the joint contractor and the representative of the pool, have a period of 15 days, from the date of receipt of the relevant documents for the direct payment, to either give acceptance or to notify the sub-contractor, by registered mail with acknowledgement of receipt, of refusal and the reason for the same. After this period and in the absence of such communication, the sub-contractor shall be entitled to directly approach CNES for the payment of the services executed by them along with the relevant documents.

XXXIII.C. Payment to the sub-contractor by CNES

Upon receipt of the documents proving the acceptance of the contractor, CNES shall directly pay to the sub-contractor the amount to which it is entitled.

The amount paid corresponds to the amount of the statement or the invoice of the sub-contractor, possibly modified by the contractor; it also includes the VAT even if the rate of VAT applicable to the sub-contractor is different from the rate applicable to the contractor.

XXXIII.D. Invoicing by the contractor

The contractor must specify in the statement or invoice addressed to CNES for the payment of its own services, the amount of work sub-contracted. They shall indicate in the statement or invoice or in an appended document, the amount to be paid to each sub-contractor.

The VAT is charged on the total amount of services provided (by the contractor + sub-contractors), at the rate applicable to the contract.

CNES shall pay the amount stated in the statement or the invoice, including VAT, after deducting the amounts already paid to the contractor or directly paid to the sub-contractors.

ARTICLE - XXXIV.PROTECTION OF SECRECY IN MATTERS OF NATIONAL DEFENCE

XXXIV.A.PROTECTION OF SECRECY FOR CLASSIFIED CONTRACTS

1. In the framework of the laws and regulations for the protection of secrecy in the interests of national defence, the contractor agrees to ensure the confidentiality of the protected information or media that it may come to be aware of or possess during the execution of the contract, taking into consideration the special provisions stipulated under the GATC and the security appendix of the contract.

2. The contractor acknowledges having understood and agreed to the following terms related to their obligations resulting from knowing or possessing protected information or documents pertaining to the national defence secrets:

- the Order dated 25 August 2003 related to the protection of secrecy of national defence and General Inter-ministerial Circular no. 1300,

- the Order dated 18 April 2005 related to the conditions of protection of secrecy and information pertaining to national defence and security of the State in the contracts,

- The General Inter-ministerial Circular no. 900 dated 20 July 1993 on the security of the information systems or processed information that are subject to defence classification.

3. The contractor shall agree to comply with the obligations on implementation of these measures and those related to all the laws and regulations pertaining to the confidentiality of national defence matters.

4. Any violation or non-observance of these security measures by the contractor even if resulting from carelessness or negligence, may result in the termination of the contract for their fault, withdrawal of the authorisation of the company access to the protected information and documents without any prejudice to penalties under Articles 413-9 to 413-12 of the French Criminal Code.

5. On completion of the protected work, the contractor shall have a period of one month period to communicate it to CNES. In case of non-compliance with this requirement, the contractor shall incur the penalty stipulated in the contract. CNES shall specify the place where the protected information or documents possessed by the contractor must be delivered. The latter shall comply with this specification.

6. The contractor undertakes to report any modification that could possibly affect the protection of the information or protected documents, provided under the contract, on its premises.

7. In the event of non-performance of the work required by the security organisation under the conditions stipulated in the Article 26 of the Order dated 18 April 2005 related to the conditions of protection of secret and information pertaining to national defence and the security of the State in the contracts, the contractor shall incur the penalty stipulated in the contract, without any prejudice to criminal sanctions.

XXXIV.B.ADDITIONAL CLAUSE FOR A CLASSIFIED RESEARCH OR ANALYSIS CONTRACT

The contractor acknowledges to CNES the authority to search among the documents and materials in its possession, for protected information or documents related to the contract and shall have the safes and premises, where the documents and materials requested by the administration will be consolidated, sealed in order to ensure their protection.

The protected information or documents listed in the security appendix must be returned in full to CNES in all circumstances. The working premises of the contractor must provide all the guarantees to ensure the protection of secrecy pertaining to national defence and is subject to verification.

XXXIV.C.PROTECTION OF SECRETS FOR THE CONTRACTS WITH A SECURITY CLAUSE

1. In the framework of laws and regulations for protection of secrecy in the interests of national defence, the contractor agrees to ensure the protection of the protected information or media that it may come to be aware of or possess during the execution of the contract, taking into consideration the special provisions stipulated in the security appendix of this contract.

2. The contractor acknowledges having understood and agreed to the following terms related to its obligations on knowing, without possessing, the information pertaining to secrets of national defence:

- the Order dated 25 August 2003 related to the protection of secrecy of national defence and general Inter-ministerial Circular no. 1300,
- the Order dated 18 April 2005 related to the conditions of protection of secrecy and information pertaining to national defence and security of the State in the contracts.

3. The contractor shall agree to comply with the obligations on implementation of these measures and those related to all the laws and regulations pertaining to the confidentiality of national defence matters.

4. Any violation or non-observance of these security measures by the contractor even if resulting from carelessness or negligence, may lead to imposition of the penalties stipulated in the contract, without any prejudice to sanctions stipulated under the Articles 413-9 to 413-12 of the French Criminal Code.

XXXIV.D.PROTECTION FOR SENSITIVE CONTRACTS

1. In the framework of the laws and regulations for the protection of secrecy in the interests of national defence, the contractor, during the execution of the contract, shall take all appropriate measures to ensure absolute protection of the protected information or media that may be retained in the premises of CNES, for whom the contract is executed or in any other site where the contract may be executed.

2. The contractor acknowledges:

- Being aware of Articles 413-9 to 413-12 of the French Criminal Code and the provisions of the Order dated 18 April 2005 relevant to the conditions of protection of secrecy and information pertaining to national defence and the security of the State in the contracts.
- That it is not necessary to know or retain the information pertaining to the secrecy of national defence.

3. The contractor undertakes to have an individual declaration signed by all the personnel under its responsibility and irrespective of their capacities in executing the services on its behalf, attesting that:

- They have understood Articles 413-9 to 413-12 of the French Criminal Code,
- They are not required to know or retain the information pertaining to the secrets of national defence, failing which they shall be subject to legal prosecution.

4. The contractor shall ensure that only the persons who have signed the above declaration access the site in order to perform services.

5. The contractor undertakes to deliver to CNES the above individual declaration(s) prior to access to the site by the relevant personnel for the performance of services.

6. No deviation from the above specifications shall be accepted or required by CNES even in case of any unforeseen event or accident or urgent replacement of a member of the contractor's personnel.

7. Any violation or non-observance of these security measures by the contractor even if resulting from carelessness or negligence, may lead to imposition of the penalties stipulated in the contract, without any prejudice to criminal sanctions.

ARTICLE - XXXV. OBLIGATION OF CONFIDENTIALITY

XXXV.A. The contractor shall maintain confidentiality and shall not disclose the documents, information, data files and software along with their documentation, which are available to it or to which it has access for the execution of the services entrusted to it. It declares having understood and agreed the general note related to the protection of unclassified defence information (CNES-SQ-NO-198 dated 01/10/2004).

XXXV.B. The data provided by CNES cannot be copied, except for back-up. At the end of the contract, these data must be returned to CNES, along with the back-up copies. Their protection, in particular, implies that these data and their derivatives used may not be further copied or distributed within the organisation of the contractor and cannot be distributed or sold to third parties without prior authorisation from CNES and the third-party owners of these data.

XXXV.C. The contractor undertakes to inform its personnel and its sub-contractors involved in the performance of the services entrusted to it of these provisions.

Consequently, the contractor shall be entirely responsible in the event of any disclosure that could potentially damage the interests of CNES and all other physical or moral persons with whom CNES has established contracts.

The contractor is bound by the undertakings prescribed in this article even after the termination of the contract, for as long as their observation is deemed necessary.

ARTICLE - XXXVI. SECURITY OF INFORMATION SYSTEMS

XXXVI.A. The contractor undertakes to respect the general policy of CNES in terms of security of the information systems outlined in the document referenced under the number 26.91/DG/IG/SI edition2/revision0 dated 10/01/1994 and cited as applicable document in the Cahier des Prescriptions de Sécurité des Systèmes d'Information (CPSSI) [Specifications for the Security of the Information Systems].

XXXVI.B. The contractor undertakes to comply with the applicable requirements of the CPSSI that are validated on signing the contract as well as any subsequent editions and revisions of these specifications after signing the contract, unless notified otherwise expressly in writing, by the contractor, within a maximum of 5 days from the date of their receipt and to maintain a related Security File.

XXXVI.C. 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.

XXXVI.D. The contractor undertakes to make each one of its personnel working on the CNES equipment and material through an IP network, sign and abide by a confidentiality agreement countersigned by itself in turn and to arrange for the authorisation requests for access to the required network services.

XXXVI.E. CNES may monitor, on the premises of the contractor, the implementation of the security requirements to which the contractor has committed.

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

ARTICLE - XXXVII. SECURITY OF WORK EQUIPMENT

The work equipment (as defined in Article R.4311-1 and pertaining to the French Labour Code) provided under this contract must comply with the following provisions:

- Decrees No. 92-765, No. 92-766 and No. 92-767 (including the technical rules) dated 29 July 1992 for new equipment,
- Decree no. 93-40 dated 11 January 1993 for used equipment.

To certify compliance with this specification, the contractor, on the date of equipment acceptance at the latest, undertakes to:

- Deliver a declaration of compliance (Order dated 18 December 1992) and an instruction manual in French,
- Arrange visible EC certification labelling for the relevant equipment.

ARTICLE - XXXVIII. ARBITRATION

This arbitration clause is applicable only for overseas contractors.

XXXVIII.A. Any dispute arising from the interpretation or execution of the contract is subject to, prior to any other procedure, an out-of-court settlement. In the event of continued disagreement and on the request of either of the parties, it shall be referred to arbitration.

XXXVIII.B. The Court of Arbitration is based in PARIS. Its rules of procedure, unless otherwise provided for in the framework agreement or the contract, are those imposed by the Arbitration Regulation of the International Chamber of Commerce, Paris.

It shall consist of three members: An arbitrator appointed by the contractor, an arbitrator appointed by CNES and a third arbitrator appointed by the first two arbitrators presiding over the Court of Arbitration.

The arbitrators shall be appointed within a time period of thirty clear calendar days, from the date of request addressed through registered mail with acknowledgement of receipt by the most diligent party.

If the first two arbitrators fail to agree on the third or if either party does not appoint an arbitrator, within the mentioned time period, the President of the Court of Arbitration of the International Chamber of Commerce, Paris shall appoint the same.

XXXVIII.C. French law shall be applicable. The arbitration shall be ruled by a majority; it is final and binding on all parties.

ARTICLE - XXXIX. LANGUAGE OF THE CONTRACT

The contract shall be drafted in French.

If part of a text or an entire text of the contract is translated in to any other language as required by the contractor, only the French version of the contract shall be binding.

ARTICLE - XL. PRODUCTION COST CONTROL (FOREIGN CONTRACTORS)

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, after the execution of the contract, calculation of the production cost of each element produced (or each part of the contract; to be defined), according to the accounting plan specified on mutual agreement.

The contractor thus undertakes:

- **For the services it executes:** To communicate, on express request of CNES, all information on the technical and accounting elements of the production cost for 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, man-month, etc.) related to the man power and machinery actually employed for the execution of the services,
- All other changes directly assignable to the contract.

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

- **For the sub-contracted services:** To negotiate with their sub-contractors the 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 (if any) shall be responsible for 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.

The information described above may not be used by CNES in any circumstances for purposes other than the control of production costs for the contract or any other similar contract.

Irrespective of the result of the cost review, the price of the services under the contract shall not be called into question. These results shall only be used as data for negotiating the services under future or other similar contracts.

ARTICLE - XLI. GOVERNMENT AUTHORISATIONS – EXPORT LICENCES.

The contractor shall be obliged to take all measures deemed appropriate to obtain all required authorisations (licences, agreements, etc.) from the competent authorities for manufacturing, use, integration, sale and / or export of all relevant items under the regulations applicable to this matter.

- a) The contractor shall provide a copy of all the authorisations obtained to CNES.
- b) The authorisations thus obtained shall be subject to a review on a key date specified in the contract.
- c) The contractor shall immediately notify, in writing, CNES of any refusal, suspension or withdrawal of authorisation, including any changes in the regulation that may subsequently affect the execution of the contract. The contractor undertakes to immediately implement the alternative solution identified in the contract.
