

LICENCE AGREEMENT
WITH
THE USER OF THE
ESA SOFTWARE PRODUCT
EDDS CLIENT

ESA Licence
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European Space Agency
Agence spatiale européenne

ESOC
European Space Operations Centre - Robert-Bosch-Strasse 5,
64293 Darmstadt - Germany
Tel. (49) 615190-0 - Fax (49) 615190 495 www.esa.int

Between

the **European Space Agency (ESA)**
(hereinafter called "the Licensor" or "the Agency")

located at 8-10 rue Mario Nikis
75738 PARIS Cedex 15
France

through its

European Space Operations Centre

located at Robert-Bosch-Strasse 5
64293 Darmstadt
Germany

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

on the one part

and **the user of this software**
(hereinafter called "the Licensee")

on the other part

the following has been agreed:

ARTICLE 1 - DEFINITIONS

Agreement	Agreement means this Agreement concluded between the parties. For the avoidance of doubt, any right granted to the Licensee in accordance with this Agreement to use the Licensed Product for analyses on (parts of) space missions under development in its own organisation are restricted in accordance with the provisions of this Agreement.
Object Code	Means the code for a computer programme expressed in machine readable form usually automatically compiled from Source Code by machine.
Licensed Product	<p>The binary code of EDDS Client.</p> <p>The software shall not be modified by the Licensee. Forwarding or distributing the software to third parties is not allowed. The third parties should access the Mission EDDS Website and download the package themselves.</p> <p>As part of the Licensed Product ESA will provide to the Licensee the existing associated ESA support documentation.</p> <p>Licensed Product means the specific version and release as defined above and any subsequent version or release the Licensor, in its sole discretion, makes generally available to its licensees under an ESA Software Licence Agreement.</p> <p>The Third Party Owned Software distributed together with the Licensed Product as well as the Third Party Owned Software not distributed together with the Licensed Product are not part of the Licensed Product.</p>
Third Party Owned Software	The term refers to any software product licensed under different terms and conditions of a 3 rd party or of the Licensor.
Third Party Owned Software distributed together with the Licensed Product	<p>For the Third Party Owned Software distributed together with the Licensed Product” (see below) the following applies:</p> <p>The Third Party Owned Software distributed together with the Licensed Product has been used at ESOC together with the Licensed Product. The Licensor does not warrant that the Third Party Owned Software distributed together with the Licensed Product is comprehensive or exhaustive.</p>

This Third Party Owned Software is distributed together with the Licensed Product only for the convenience of the Licensee, e.g. because at ESOC a specific, maybe older version of the Third Party Owned Software was used.

Therefore, as described in Article 7 of this Agreement, it is at the sole discretion of the Licensee whether or not to use any of the Third Party Owned Software distributed together with the Licensed Product. Prior to any such use, the Licensee must obtain the respective licences to use this Third Party Owned Software and must comply during such use with the terms and conditions of such licences.

Third Party Owned Software **not** distributed together with the Licensed Product

The use of the Licensed Product requires “Third Party Owned Software not distributed with the Licensed Product” as indicated by the EDDS Client application and documentation:

As described in Article 6 of this Agreement, it is at the sole discretion of the Licensee whether or not to use any of the Third Party Owned Software not distributed together with the Licensed Product. Prior to any such use, the Licensee must procure himself the respective Third Party Owned Software, must obtain the respective licences to use this Third Party Owned Software and must comply during such use with the terms and conditions of such licences.

Peaceful Purpose

As per ESA Convention and its interpretation by ESA’s bodies.

Intellectual Property Rights (IPR)

All registered intellectual property rights and all unregistered intellectual property rights granted by law without the need for registration with an authority or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trade marks, design rights, data base rights, topography rights, know how and trade secrets or equivalent rights or rights of action anywhere in the world.

ESA Member States

Means all the ESA Member States at the date of the execution of this Agreement.

Agency’s Own Requirements

Means (in accordance with Annex IV of the General Clauses And Conditions For ESA Contracts) the activities and programmes undertaken by the Agency in the field of space research and technology and space applications in accordance with Article V 1 (a) and (b) of the European Space Agency Convention.

Territory	Means the territory of the ESA Member States and Non ESA Member States, which are covered by a Memorandum of Understanding between ESA and the respective Non-ESA Member State with respect to a certain mission/project.
ESA Member States being part of the Territory	Means those of the countries forming the above Territory, which are ESA Member States.
Non ESA Member States being part of the Territory	Means those of the countries forming the above Territory, which are not ESA Member States.

ARTICLE 2 - PREAMBLE

- 2.1 The Licensor has developed the Licensed Product solely for its own purposes. The Licensed Product is not developed for the purpose to market and distribute it by the Licensor to any other party for any other purpose. However, the Licensor is willing to grant licenses for the Licensed Product to companies, institutions and organisations with regard to this Agreement.
- 2.2 The Licensor has not tested and will not test the Licensed Product, before distribution to the Licensee. The software may therefore have incomplete functions regarding the requirements of the Licensee or may have still several defects not yet identified by the Licensor. Subject to Article 12.4, the Licensor does not support and/or maintain the Licensed Product used by a third party.
- 2.3 The Licensee is aware of the above. Nevertheless, the Licensee wants to license the Licensed Product from the Licensor within this Agreement and the Licensee will take appropriate measures to avoid the risks regarding the above.

ARTICLE 3 - SCOPE OF THE AGREEMENT

- 3.1 For the term of and in accordance with the terms and conditions of this Agreement, the Licensor shall provide free of charge to the Licensee the Licensed Product. The Licensor shall only provide the Licensed Product in the version specified in Article 1.
- 3.2 The Licensee shall use the Licensed Product solely for purposes of analyses on (parts of) space missions under development in its own organisation and for no other purpose. However, any right granted to the Licensee in accordance with this Agreement to use the Licensed Product is restricted in accordance with the provisions of this Agreement.
- 3.3 The Licensor shall not be obliged to provide any support or maintenance to the Licensee regarding the Licensed Product.

ARTICLE 4 - GRANT OF LICENCE; LICENCE RESTRICTIONS

- 4.1 For the term of this Agreement, the Licensor grants to the Licensee, according to the provisions of this Agreement a royalty-free, non-exclusive, non-transferable licence, and limited to the Territory:
- (a) to make and install a reasonable number of copies of the Licensed Product to the extent necessary for analyses on (parts of) space missions under development in its own organisation;
 - (b) to use the Licensed Product solely for the purpose of analyses on (parts of) space missions under development in its own organisation and in a manner consistent with the use limitations specified in this Agreement.
 - (c) to incorporate, embed or merge the Licensed Product into any other software product.
- 4.2 Only object code of the Licensed Product is supplied to the Licensee in accordance with this Agreement. The following conditions apply:
- (a) any recompilation of the object code of the Licensed Product into other code forms (decompilation) as well as any other method to obtain access to the source code (e.g. through reverse engineering or disassembling) are not allowed
 - (b) the Licensee shall not translate, alter or otherwise modify or prepare derivative works of the Licensed Product.
- 4.3 The Licensee may only install, load, run and use the Licensed Product within the use limitations defined in this Agreement.
- 4.4 The use of the Licensed Product shall be limited to Peaceful Purposes exclusively.
- 4.5 The Licensee shall only be authorized to use the Licensed Product for its own, internal purposes within the analyses on (parts of) space missions under development in its own organisation
- 4.6 If not otherwise agreed in this Agreement, the Licensee may not distribute, sell, sublicense or permanently or temporarily rent, lease or permit third parties to have otherwise access to the Licensed Product.
- 4.7 If the Licensee wants to permit the use of the Licensed Product to its affiliates or other third parties (e.g. contractors of the Licensee), reference is made to 4.1 (c), the affiliate or other third party should request a new license from the Licensor.
- 4.8 If the purpose of this Agreement requires that the Licensee grants a sub-licence to a sub-licensee, then the sub-Licensee is asked to request a new license from the Licensor.

ARTICLE 5 - INTELLECTUAL PROPERTY RIGHTS

- 5.1 Licensor, or its suppliers where applicable, retains all right, title and interest in and to the Licensed Product, and all of Licensor's, or its suppliers' or licensors', patents, trademarks (registered or unregistered), trade names, copyrights, trade secrets and confidential information. Licensee does not acquire any right, title or interest in or to the Licensed Product except as expressly set forth herein.
- 5.2 Copyright and other intellectual property notices within the Licensed Products shall not be removed or altered by Licensee. They shall be replicated in any copy of the Licensed Product.

ARTICLE 6 - THIRD PARTY OWNED SOFTWARE NOT DISTRIBUTED TOGETHER WITH THE LICENSED PRODUCT

- 6.1 The use of the Licensed Product requires "Third Party Owned Software not distributed with the Licensed Product" as indicated by the EDDS Client application and documentation. The following applies:
- 6.2 The Third Party Owned Software listed there has been used at ESOC together with the Licensed Product. However, this Third Party Owned Software will not be distributed together with the Licensed Product. The Licensor does not warrant that the list is comprehensive or exhaustive.
- 6.3 It is at the sole discretion of the Licensee whether or not to use any of the Third Party Owned Software not distributed together with the Licensed Product. Prior to any such use, the Licensee must procure himself the respective Third Party Owned Software, must obtain the respective licences to use this Third Party Owned Software and must comply during such use with the terms and conditions of such licences. Those terms and conditions may differ from the terms and conditions in this Agreement.
- 6.4 Third Party Owned Software not distributed together with the Licensed Product will neither be delivered nor licensed under this Agreement.

ARTICLE 7 - THIRD PARTY OWNED SOFTWARE DISTRIBUTED TOGETHER WITH THE LICENSED PRODUCT

- 7.1 For Third Party Owned Software distributed together with the Licensed Product" (see Article 1). the following applies:
- 7.2 This Third Party Owned Software is distributed together with the Licensed Product only for the convenience of Licensee, e.g. because at ESOC a specific, maybe older version of the Third Party Owned Software was used. The Third Party Owned Software listed there and distributed together with the Licensed Product has been used at ESOC together with the Licensed Product. The Licensor does not warrant that the list of Third Party Owned Software distributed together with the Licensed Product is comprehensive or exhaustive.

- 7.3 It is at the sole discretion of the Licensee whether or not to use any of the Third Party Owned Software distributed together with the Licensed Product. Prior to any such use, the Licensee must obtain the respective licences to use this Third Party Owned Software and must comply during such use with the terms and conditions of such licences. Those terms and conditions may differ from the terms and conditions in this Agreement.
- 7.4 For the avoidance of doubt, the Third Party Owned Software distributed together with the Licensed Product is not licensed under this Agreement.

ARTICLE 8 - NO LICENSE FEE

The Licensor grants the licence for the Licensed Product to the Licensee free of charge.

ARTICLE 9 - EXPORT; EXPORT RESTRICTIONS

- 9.1 The licence grant to the Licensee is limited to the Territory. Therefore, the Licensee may only export or use the Licensed Product outside the Territory if the Licensor in advance gave its express written consent to do so.
- 9.2 Even if the Licensor in this Agreement has given its prior written consent to export and use the Licensed Product outside the country in which the Licensee has its registered headquarter, it is the sole obligation of the Licensee to ensure that the Licensed Product and any other technical data or information, product, process, results or application received from the Licensor in connection with this Agreement will only be transported, transferred or exported directly or indirectly to any country other than the country, in which the Licensee has its registered headquarter, without violation of any applicable law, including but not limited to all export control laws, regulations, rules and procedures and any relevant international agreements relating to the export of goods and/or services, as well as the relevant regulations of the Licensor. In case the export or use of the Licensed Product outside the country, in which the Licensee has its registered headquarter, will violate any of the above-mentioned provisions, the Licensee will not export or make use of the Licensed Product outside this country despite the licence granted under this Agreement.

ARTICLE 10 - INFRINGEMENT

- 10.1 The Licensor uses the Licensed Product solely for its internal purposes. Therefore, the Licensor does not warrant that the Licensed Product does not infringe any third party Intellectual Property Rights outside the ESA Member States being part of the Territory. This shall apply even if the Territory includes Non ESA Member States.
- 10.2 Even if the Territory includes Non ESA Member States, in case the Licensee wants to export and make use of the Licensed Product outside the ESA Member States being part of the Territory, it is the sole obligation of the Licensee to investigate and verify whether or not the intended export

or use of the Licensed Product outside the ESA Member States being part of the Territory does infringe any third party Intellectual Property Rights (e.g. third party's patents or trademarks). In case the export or use of the Licensed Product outside the ESA Member States being part of the Territory will infringe a third party's Intellectual Property Right, the Licensee will not export or use of the Licensed Product outside the ESA Member States being part of the Territory.

10.3 Infringements within the ESA Member States being part of the Territory

- (a) The Licensee shall notify the Licensor immediately of any claim or notice of infringement of third party rights concerning the use of the Licensed Product within the ESA Member States being part of the Territory.
- (b) If the use of the Licensed Product within the ESA Member States being part of the Territory results in an infringement of copyright or other intellectual property rights of third parties, the Licensor may at its sole discretion either acquire for the Licensee the right to continued use or alter or replace the Licensed Product, such that the infringement does no longer exist. If this is not possible upon commercially reasonable conditions or within a reasonable period of time or if a judgement is made against the Licensee or the Licensor by a court of competent jurisdiction and if as a result the Licensee cannot use the Licensed Product without infringing third party rights, either party may terminate this Agreement with immediate effect by written notice and therefore revoke with immediate effect the licence grant to the Licensee for the Licensed Product.
- (c) The Licensee shall assist and cooperate with Licensor in the defence of any claim and shall give Licensor the sole control of the defence remedies, including but not limited to any negotiations for settlement.
- (d) Licensor shall not be held liable if the infringement of the third party's Intellectual Property is caused by any modification or alteration of the Licensed Product done by the Licensee.
- (e) Compensation of damages or reimbursement of wasted expenditures due to infringements of third party's Intellectual Property will be paid by Licensor only within the limits set forth in Article 14 - Liability.

10.4 Infringements outside the ESA Member States being part of the Territory

- (a) The Licensee shall notify the Licensor immediately of any claim or notice of infringement of third party rights concerning the export or use of the Licensed Product outside the ESA Member States being part of the Territory.
- (b) Licensee shall indemnify and hold harmless the Licensor from all claims made by a third party because of the infringement of third party rights concerning the export or use of the Licensed Product outside the ESA Member States being part of the Territory.

ARTICLE 11 - TERM AND TERMINATION

- 11.1 This Agreement enters into force immediately upon accepting the Licence Agreement's terms and conditions via the Mission EDDS Website and shall remain in force indefinitely until and unless terminated:
- a) by mutual agreement;
 - b) as indicated in Article 10.3(b).
- 11.2 If the Licensee breaches any of the provisions of this Agreement, the Licensor may terminate this Agreement by giving sixty (60) days prior written notice to the Licensee, provided however, that the Agreement shall not terminate if the Licensee has cured the breach within the sixty (60) days period.
- 11.3 The Agreement shall automatically terminate in the event that the Licensee is adjudicated to be bankrupt, or becomes bankrupt, or places any of his property in liquidation for the purposes of meeting claims of his creditors.
- 11.4 The parties' right to terminate with immediate effect for good cause shall remain unaffected by the foregoing termination provisions.
- 11.5 Any termination notice must be made in writing.
- 11.6 Termination of this Agreement shall not, however, release either party from its confidentiality obligations entered into under this Agreement.

ARTICLE 12 - DEFECTS, SUPPORT AND/OR MAINTENANCE

- 12.1 The Licensor has developed the Licensed Product solely for its own purposes and not for the purpose to market and distribute it. The Licensee is aware of the fact that the Licensor has not tested the Licensed Product before providing it to the Licensee and the Licensed Product may, therefore, still have defects or may have incomplete functions regarding the requirements of Licensee.
- 12.2 Therefore the Licensor gives no undertaking as to the adequacy and/or suitability and/or the completeness of the Licensed Product, for the purposes required by the Licensee for this Agreement or for any other purpose.
- 12.3 The Licensor shall in no event be liable for any damage resulting from the use or the inability to use the Licensed Product, even if the Licensor or any authorised representative of the Licensor has been informed of the possibility of such damage. The Licensor shall neither be liable for any damage resulting from the modification of the Licensed product by the Licensee.

- 12.4 Under this Agreement the Licensor is not obliged to support and/or maintain the Licensed Product. However, in case Licensee needs support regarding the installation or use of the Licensed Product or to maintain the Licensed Product because of any errors or malfunction, the Licensee may contact the Licensor and the Licensor may provide the Licensee with an offer for the requested support and/or maintenance on terms and conditions and against payment of a fee then to be agreed between the parties.

ARTICLE 13 - LIABILITY

The Licensor shall be liable under this Agreement only in the event of damages, which are caused wilfully by or through the gross negligence of Licensor or caused by fraud of the Licensor.

ARTICLE 14 - NON-DISCLOSURE

- 14.1 Confidential information of Licensor shall mean any and all information disclosed or otherwise made accessible during the term of this Agreement to the Licensee and shall include without limitation the terms and conditions of this Agreement, the Licensed Product supplied by Licensor to the Licensee (object code; support documentation), as the Licensed Product contains manufacturing secrets, and all other technical and non-technical information regarding the Licensed Product.
- 14.2 The Licensee will use the Licensed Product only in accordance with the licence grant to Licensee by Licensor in this Agreement and will not use other disclosed confidential information of Licensor for any purpose other than the purpose of this Agreement.
- 14.3 If not otherwise agreed hereafter, the Licensee shall treat all confidential information of Licensor as confidential, i.e. will not make such information available to any third party in any manner, either directly or indirectly. In order to protect the confidential information, the Licensee has to keep and maintain strictest confidentiality.
- 14.4 Third parties for purposes of section 14.3 shall not include employees of the Licensee who have a need to know such confidential information for the purpose of this Agreement. The Licensee may grant access to such employees provided that such employees have in advance agreed in writing that they will adhere to the obligations of confidentiality of this Agreement, and provided further that they have agreed in writing for the benefit of the Licensee and the Licensor to keep the confidential information confidential in the same manner.

- 14.5 Access to the confidential information of the Licensor shall only be granted to other parties, e.g. subcontractors or sub-licensees, if (i) the disclosure of the confidential information (e.g. access to the Licensed Product in object code or in source code) to such third party is necessary for the purpose of this Agreement and only if such disclosure is made in accordance with the licence grant to the Licensee by the Licensor in this Agreement or (ii) if the Licensor has given its prior written consent. The Licensee may grant access to such third parties only if the respective third party has in advance agreed in writing that it will adhere to the obligations of confidentiality of this Agreement, and provided further that it has agreed in writing for the benefit of the Licensee and the Licensor to keep the confidential information of Licensor confidential in the same manner.
- 14.6 Any wrongful disclosure contrary to the terms and conditions of this Agreement may require the Licensee to pay an indemnification to the Licensor.

ARTICLE 15 - GOVERNING LAW AND ARBITRATION

- 15.1 The laws of Germany excluding the conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply.
- 15.2 Any dispute arising out of or in connection with this Agreement, shall, at the request of either party, be submitted to arbitration and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, without recourse to the ordinary courts of law, by one or more arbitrators appointed in accordance with said rules. The parties expressly agree that also in cases one party wants to obtain a preliminary injunction or other form of temporary relief, the recourse to the ordinary courts of law is also excluded and only arbitration proceedings shall take place in accordance with said rules.
- 15.3 The award shall be final and binding on the parties; no appeal shall lie against it.
- 15.4 The place of arbitration shall be Darmstadt, Germany, and the language of the arbitration proceedings shall be English.

ARTICLE 16 - NOTICES

All notices referred to in or required by this Agreement shall be in writing and shall be directed to the following addressees:

The Licensor:

- for technical matters: Mr. R. Santos, email: ruisantos@esa.int
- for contractual/
administrative matters: Mrs. S. Röttger, email: sabine.roettger@esa.int

ARTICLE 17 - GENERAL CONDITIONS

- 17.1 The Licensee authorises the Licensor to name the Licensee as a user of the Licensed Product in the reference documents produced and published by the Licensor.
- 17.2 Each of the parties to this Agreement shall be authorised to mention the existence and subject of this Agreement in a press release. The parties shall prepare the contents of said press release in good faith, without disclosing the confidential information of the other party. The party issuing the release shall obtain and take account of the comments of the other party, which shall have four (4) weeks after receipt of the draft text to submit such comments. If no comments are made during this period, the press release shall be deemed accepted. The issuing party shall notify the other party no later than five (5) days before publication of the press release.
- 17.3 No party hereto may assign its rights, duties or obligations under this Agreement without the prior written consent of the other party.
- 17.4 This Agreement constitutes the entire agreement between the parties with respect to the scope of this Agreement. No unwritten oral agreements exist. Any modification or amendment of this Agreement must be made in writing. The same shall apply for any change to this requirement that modifications or amendments be made in writing.
- 17.5 Should individual provisions of this Agreement be or become invalid, this shall not otherwise affect the validity of the remaining provisions. The parties agree to replace the invalid provision with a valid one coming as close as possible to the economic purpose of the invalid provision. The same shall apply in the event that this Agreement should be missing one or more key terms.
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