

Sub-Licence Agreement on ESABASE2 Tool

PREAMBLE

WHEREAS:

1. The European Space Agency (hereinafter refer to as "the Agency" is the owner of the ESABASE2 application tool (hereinafter referred to as "the software"), as a result of an internal development.
2. The Agency and etamax space GmbH (D) have signed an agreement (Contract Change Notice no. 3 to ESTEC Contract No. 16852/02/NL/JA) for the support, distribution and maintenance of the software.
3. The above-mentioned agreement includes a licence entitling etamax space to use, copy, modify and grant sub-licences on the software in order to fulfil its obligations under the above-mentioned agreement.

Project: R063 – ESABASE2 Licenses	Date:	2012-01-04
Reference: Licence_+FEV.docx	Revision:	1.0

1 PARTIES TO THE AGREEMENT

1.1. LICENSOR. On the one side, the Licensor of the licensed subject, etamax space GmbH (D), located at Frankfurter Straße 3 d, D-38122 Braunschweig, Germany. In this agreement the term "Licensor" always refers to the etamax space GmbH. For the purposes of the present agreement the Licensor is represented by:

Dr. Karl Dietrich Bunte
(ESABASE2 Project Manager)

1.2. LICENSEE. On the other side, the Licensee:

..... (organisation/company/name)

whose registered office is located at

..... (street address)

..... (zip/postal code, city)

..... (country)

2 DEFINITIONS

For the purpose of the implementation and interpretation of the present agreement, the following definitions are agreed between the parties:

2.1 "Software" means the ESABASE2 application tool in object and executable code and documentation needed for its proper functionality.

2.2 "Intellectual Property Rights" means all Registered Intellectual Property Rights and all unregistered intellectual property rights granted by law without the need for registration with an authority of office including all rights in information, data, blue prints, 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;

2.3 "Third Party" to this agreement is any individual, corporation, institution or legal entity other than strictly those mentioned in section 1 of the present document. For instance, the following entities shall be considered third parties: a company belonging to the same financial group than Licensee, a subsidiary of Licensee, a shareholder of Licensee, a partner of Licensee, etc.

3 SUBJECT, SCOPE AND LIMITATIONS OF THE LICENCE

- 3.1 **SUBJECT OF THE LICENCE:** The subject of the present licence agreement is the application tool defined in section 2 here-above. Licensor declares that this application tool is the property of the European Space Agency, (except the following software packages: Eclipse, Open Cascade, VisAD and JFreeReport, which are available under different Open Source Licenses (see section 6.2).
- 3.2 **SCOPE OF THE LICENCE:** Licensor hereby grants Licensee a non-exclusive, licence to use the software for his own purposes within the field of space environment analysis and impact risk assessment, without the right to further grant sub-licences. The usage of the software at more than one workstation requires dedicated licenses.
- 3.3 **SCOPE LIMITATIONS:** The use of the licensed subject by Licensee shall be limited to peaceful purposes within the limits of the scope of the licence mentioned in section 3.2 above. Licensee shall not make use of the licensed subject for any other purposes than those stated in section 3.2 above.

4 TERM OF LICENCE AND RIGHT OF TERMINATION

- 4.1 **LICENCE PERIOD.** Licensor grants the present licence to Licensee for a period of 12 months from the date of signature of this Agreement by both parties. This license period may be extended upon mutual agreement. The license commencement date of this license is (yyyy-mm-dd). This license period may be extended upon mutual agreement.
- 4.2 **SUPPORT CONTRACT:** This licence is valid only after the establishment of a Support Contract between Licensor and Licensee.
- 4.3 **GENERAL UNDERTAKINGS BY LICENSEE:** Licensee shall at all times keep all received software safe and strictly confidential. Licensee shall not disclose the received software -nor any part thereof- to any third party both during and after the term of the licence. To this respect, Licensee shall take all appropriate security precautions.
- 4.4 **RIGHT TO TERMINATE:** Either party may terminate the agreement upon breach by the other party of any of the terms and conditions of the present agreement. Notice shall be served by means of registered mail to the breaching party. Should the breach not be cured within sixty (60) days from the date of the receipt of such notice, the licence shall stand terminated.
- 4.5 **CONSEQUENCE OF TERMINATION:** Upon expiration or termination of the present agreement, without prejudice of settlement of any pending debts or claims, Licensee shall return to Licensor all the software and documentation received from Licensor and any copy thereof, keeping no copies in its possession.

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5 RIGHTS AND OBLIGATIONS ON MODIFIED SOFTWARE

The Licensor may provide the source code of the software either in whole or in parts to the Licensee. In this case, the following conditions shall apply:

- 5.1 **CREATION OF MODIFICATIONS TO THE SOFTWARE:** Licensee is hereby authorised by Licensor to develop modifications to the original delivered software. Licensee shall report the creation of those modifications to Licensor without delay as soon as they are developed.

The intellectual property on the modifications shall vest in the owner of the original development (i.e. the European Space Agency).

- 5.2 **CREATION OF CORRECTIONS TO THE SOFTWARE:** Licensee shall report to Licensor any errors, which he will find in the original software as well as in the modified software, if related to the original one. Within two weeks of identifying and correcting such an error, Licensee shall deliver to Licensor software and documentation of the corrected software in an electronically readable format to be mutually agreed between Licensee and Licensor. The corrected software shall then be made available by Licensor to other Licensees.

In such case, the modification being aimed at solving functional defects, the intellectual property shall vest in the owner of the original development (i.e. the European Space Agency).

6 LIABILITY

- 6.1 **INFRINGEMENT OF THIRD PARTY RIGHTS:** Licensee shall use the licensed software according to the applicable laws.

Licensee shall notify Licensor immediately of any written claim or notice of infringement of third party rights concerning the licensed software. Licensor will take steps within its competence to prevent or end a dispute and may at its discretion assist the Licensee to defend against any claim or notice of infringement or suit for infringement. At its discretion, Licensor may conduct negotiations for the settlement of such infringement or suit. Licensee shall offer Licensor all reasonable assistance for such negotiations.

If a judgement is made against Licensee by a court of competent jurisdiction and if as a result Licensee cannot use the licensed software without infringing third party rights, the Licensee may terminate this licence forthwith by written notice to Licensor.

Licensee shall indemnify the Licensor from and against all claims, proceedings, damages, costs and expenses arising from the wrongful disclosure or use by Licensee of the licensed software contrary to the terms of this licence.

- 6.2 **OPEN SOURCE LICENSES:** Parts of the Software are using tools that are subject to different public licenses, namely the Eclipse Public Licence (Eclipse), the Open CASCADE Technology Public License (Open Cascade) and the GNU Lesser General

Public Licence (VisAD, JFreeReport). These parts of the Software are distributed under the respective licence.

In case of conflicts between this licence and the terms and conditions of the respective public licenses, the latter shall prevail.

Done in two originals

In Braunschweig

In

On

On

For etamax space GmbH

For

Dr. Karl Dietrich Bunte