**AGREEMENT FOR JOINT SUPERVISION**

**BETWEEN:**

**OFFICE NATIONAL D’ETUDES ET DE RECHERCHES AEROSPATIALES,** a French Agency (Etablissement Public à caractère industriel et commercial), with its head office at Chemin de la Hunière, BP 80100, 91123 Palaiseau cedex, France, represented by Mr. Jean LEGER, acting as General Secretary,

Hereinafter referred to as “**ONERA**”

**AND:**

 **THE ISTITUTO NAZIONALE DI ASTROFISICA**

Italian Public Institution

Located Viale del Parco Mellini 84 - 00136 Rome, ITALY

Represented by Dr. Maria Sofia Randich

duly delegated by the President Prof. Marco Tavani,

Hereinafter referred to as “**INAF**”

Hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

# Preamble

Whereas ONERA is the French aeronautics, space and defense research lab. ONERA has experience in the frame of Adaptive Optics, Wavefront Sensing, Control and Post Processing and their design and integration into operational instruments.

Wheras ONERA has signed an agreement on AO for astronomy activities with the Laboratoire d’Astrophysique de Marseille (hereinafter “LAM”), with effects of January 1st 2017, registered under the number CNRS 165754.

INAF is the most important Italian institution conducting scientific research in astronomy and astrophysics. It has experience in the frame of Adaptive Optics, Wavefront Sensing, Large deformable mirrors and their application to astronomical instrumentations on large and extremely large telescopes.

ONERA has executed an employment contract with Nicolas LEVRAUD (hereinafter referred to as the “Doctoral Candidate”) for a doctoral project (hereinafter referred to as the “Project”) entitled **“Toward the Ultimate Wave-Front-Sensor for High Contrast Imaging: Application to Large Binocular and European Extremely large Telescopes”**, carried out by the Doctoral Candidate.

The Parties have decided to collaborate for the joint supervision of the Project.

**ARTICLE 1 - DEFINITIONS**

In this Agreement, the following terms, used with a capital letter, in plural or singular, shall have the following meanings:

* 1. **Agreement:** means the present Agreement for joint supervision, including its appendices which are made an integral part thereof, and its possible amendments.
	2. **Background**: means any information and technical and/or scientific knowledge, in particular know-how, manufacturing secrets, trade secrets, data, software (in their source code and object code version), files, plans, schematic diagrams, drawings, formula, and/or any other kind of information, in any form, patentable or not, and/or patented or not, and all intellectual property rights resulting therefrom, necessary for the execution of the collaboration and owned by a Party or in its possession prior to the Effective Date, for which the said Party has the right to grant licenses or rights of use for the Project without having to seek the prior consent of a third party. The Background of each Party is listed in Attachment 1.
	3. **Confidential Information**: means any information, and/or any data in any form and of any kind, including in particular any written or printed documents, any samples or models, and/or knowledge, whether patentable or not, disclosed by one Party to the other Party under the Agreement, provided that the Discloser has indicated in a clear and unambiguous manner its confidential nature or, in the case of oral disclosure, that the Discloser has made known orally its confidential nature at the time of the disclosure and confirmed it in writing within thirty (30) days. It is understood between the Parties that during these thirty (30) days, information exchanged between the Parties are treated as Confidential Information.
	4. **Discloser**: means the Party that discloses Confidential Information.
	5. **Doctoral Candidate**: means the student trained by the Parties carrying out the Doctoral Project and designated hereinabove in the Preamble.
	6. **Project**: means the research project carried out by the Doctoral Candidate in the framework of his doctoral training, defined in Attachment 1 and entitled “Toward the Ultimate Wave-Front-Sensor for High Contrast Imaging: Application to Large Binocular and European Extremely large Telescopes”.
	7. **Effective Date**: means the date identified in the following Article 4.
	8. **Recipient**: means the Party that receives Confidential Information.
	9. **Results**: means any information and technical and/or scientific knowledge, including know-how, manufacturing secrets, trade secrets, data, Software (in their Source Code and Object Code), files, plans, schematic patentable or not, and/or patented or not, or any other kind of information, in any form, developed by a Party during the Project.

**ARTICLE 2 - PURPOSE**

The purpose of the Agreement is to set forth the terms and conditions in which:

* the Parties will supervise the Doctoral Candidate to allow them to perform the Project;
* Intellectual property rights will be assigned to the Parties;
* the Project will be funded

## ARTICLE 3 – NATURE OF THE AGREEMENT

The Agreement is an arrangement between the Parties to collaborate for the joint supervision of the Doctoral Candidate to perform the Project.

Accordingly nothing in the Agreement shall constitute or be deemed to constitute either a partnership or any formal business organisation or legal entity independent from the Parties. Each Party shall act as an independent contracting Party and not as the agent of any of the other Party.

## ARTICLE 4 – ENTRY INTO FORCE – DURATION

## The Agreement comes into force upon the last signature by the Parties and has a retroactive effect from XXX (the “Effective Date”).

## The Agreement expires thirty-six (36) months from the Effective Date.

## The Agreement can be extended after the term here above with a written agreement of the Parties, by an amendment which will state the purpose and duration of such extension and financial terms if any.

## The provisions of articles 7, 8 and 9 shall survive the termination or expiration of the Agreement for the duration set forth is these articles.

**ARTICLE 5 – IMPLEMENTATION**

## 5.1 Thesis directors

## The Doctoral Candidate carries out schooling and research work under the joint responsibility of:

* in France, a thesis director from Aix-Marseille University, Dr. Thierry Fusco and a thesis supervisor from ONERA, Thierry Fusco;
* in Italy, a thesis supervisor from INAF, Simone Esposito.

**5.2 Meetings**

The thesis supervisors undertake to jointly assume the scientific supervision of the doctoral project. Regular joint monitoring of the work will be ensured according to appropriate modalities.

Working meetings will take place between the Parties at least every six (6) months.

**5.3 Place of execution**

For the realisation of the Project, the Doctoral Candidate’s work is performed at the premises of ONERA and LAM, in the frame of the ONERA-LAM agreement on AO for astronomy activities and of INAF.

Depending on scientific needs and material necessities of the thesis work, the planned time allocation of work is as follows:

* 50% of the time will be spent on the Project at the premises of ONERA and LAM
* 50% of the time will be spent on the Project at the premises of INAF.

**5.4 Organisation of the Project**

ONERA undertakes to ensure that the Doctoral Candidate complies with the Parties’ internal regulations. All the relevant instructions will be given to the Doctoral Candidate by the thesis supervisors.

ONERA undertakes to ensure that the Doctoral Candidate complies with the Parties’ environmental, health and safety systems.

ONERA undertakes to fulfil all its obligations towards the Doctoral Candidate as his/her employer, including its social security and tax obligations.

**ARTICLE 6 – FINANCIAL PROVISIONS**

ONERA undertakes to bear the coast of the Doctoral Candidate’s wage, as well as his/her mission expenses.

In return, INAF undertakes to pay ONERA the lump sum of 60 000 euros before tax.

This sum is paid following the payment schedule hereunder:

* 15 000 € before tax at the signature of the Agreement (hereinafter “T0”)
* 15 000 € before tax at T0 + 12 months,
* 15 000 € before tax at T0+24 months,
* 15 000 € before tax at the expiration of the Agreement.

 Invoices shall be sent to:

ONERA

Financial Department (DAEF)

Chemin de la Hunière

91120 Palaiseau – France

Payment shall be made to the bank account opened in the name of : ONERA AGENT COMPTABLE :

 Société Générale Boulogne Billancourt (03766)

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| --- | --- | --- | --- |
| Code Banque | Code Guichet | Numéro du compte | Clé RIB |
| 30003 | 04260 | 00020010421 | 69 |
| IBAN : FR76 30003 04260 00020010421 69 |

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.1 Rules of property**

**7.1.1 Property of Background**

Subject to the rights of third parties, each Party remains the owner of his Background.

**7.1.2 Property of Results**

Results are the sole property of the Party that generates them.

Where Results are generated from work carried out jointly by the two Parties and it is not possible to separate such joint work, the Parties shall have joint ownership of these Results.

The Parties shall establish a written separate joint ownership agreement regarding the allocation of ownership and terms of exercising and protecting such jointly owned Results before any exploitation of said jointly owned Results.

**7.2 Access rights**

**7.2.1 Access rights for Background**

Each Party grants to the other Party a non-exclusive right to use of its Background that is necessary to perform the Project, without sub-license right, without a transferable right, for the duration of the Agreement. Background shall be treated as Confidential Information.

If needed for the exploitation of the Results, each Party grants to the other Party an access rights to its Background for the exploitation of the Results. This access right shall be granted on fair and reasonable conditions, with a specific contract.

**7.2.2 Access rights for RESULTS**

Each Party uses and exploits its own Results as it wants.

Each Party grants to the other Party a free right of use of its own Results to perform the Project for the duration of the Agreement.

Each Party grants to the other Party a free right of use of its Results for internal research, to the exclusion of any and all direct and/or indirect use for commercial purposes, after a written request, during the Agreement, and for five (5) years after the term of the Agreement. Any access right of use granted expressly exclude any rights to sublicense unless expressly stated otherwise. Rights of use are granted on a non-exclusive basis.

In case of jointly owned Results, each Party is entitled to use the jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner.

Each Party which owns or co-owns Results undertakes, for the duration of the collaboration and the period of eighteen (18) months which follows its expiration, to grant the other Party, upon their request, a non-exclusive license to use its Results which is necessary to exploit the requesting PARTY’s own Results for commercial purposes, under preferential conditions **–** i.e. terms more favorable than those which would be granted to a third party for the application sector considered.

The commercial conditions and the terms of the license shall be negotiated prior to any commercial and/or industrial exploitation and shall be the subject of a separate license agreement between the Parties concerned.

It is understood that the exploitation licenses granted hereunder shall be non-transferable and shall not include the right to grant sub licenses, unless otherwise previously authorized in writing by the owning or Co-owning Party.

**ARTICLE 8 – CONFIDENTIALITY**

The Recipient hereby undertakes, for a period of five (5) years after the end of the Agreement:

* Not to use Confidential Information otherwise than for the purpose for which it was disclosed;
* not to disclose Confidential Information without the prior written consent by the Discloser;
* to ensure that internal distribution of Confidential Information by the Recipient shall take place on a strict need-to-know basis; and
* to return to the Discloser, or destroy, on request all Confidential Information that has been disclosed to the Recipient including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipient may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

The Recipient shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

* the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
* the Discloser subsequently informs the Recipient that the Confidential Information is no longer confidential;
* the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Discloser;
* the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Discloser;
* the Confidential Information was already known to the Recipient prior to disclosure, or
* the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order.

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Agreement, as with its own confidential and/or proprietary information, but in no case less than reasonable care.

Each Party shall promptly advise the other Party in writing of any unauthorized disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorized disclosure, misappropriation or misuse.

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure:

* notify the Discloser, and
* comply with the Discloser’s reasonable instructions to protect the confidentiality of the information.

**ARTICLE 9 – COMMUNICATION - PUBLICATIONS**

During the Project and for a period of three (3) years after the end of the Project, the publication or communication of own Results by a Party shall be subject to prior notice to the other Party at least thirty (30) calendar days before the publication or communication.

Any objection to the planned publication shall be made in writing within fifteen (15) calendar days after receipt of the notice. An objection is justified if:

* the protection objecting Party's Results or Background would be adversely affected, or
* the objecting Party's legitimate interests in relation to the Results or Background would be significantly harmed.

If an objection has been raised the Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that Confidential Information, Background and/or Results of the objecting Party has been removed from the publication as indicated by the objecting Party or the objection has been appropriately addressed to the satisfaction of the objecting Party.

The publication or communication should mention the participation of each Party in the execution of the Project. These publications or communications have to make clearly appear the mention “ONERA, DOTA, Paris Saclay University, F-92320 Châtillon, France and Arcetri Astrophysical Observatory; Largo E. Fermi 550125-FIRENZE, ITALY”.

Notwithstanding, each Party commits itself not to use the name of the other Party or one of its employees, for whatever purpose, including a promotional goal, whatever the medium used (video, press release…), without obtaining the prior written agreement of the other Party.

**ARTICLE 10 – WARRANTY – LIABILITY**

Each Party uses the Background and/or the Results at its own risks and expense

The Background and Results are granted “AS IS” with no representations or warranties of any kind as to quality, performance, suitability for purpose or freedom from defects, except as provided hereinabove.

The Parties agree that a Party shall not be held responsible for any damage suffered by the other Party, arising from the use of the Background and/or Results.

No Party shall be liable for any direct or indirect damage or loss howsoever which might arise by reason of use by the other Party of any Background and/or Results.

No warranty or representation of any kind is made, given or implied neither as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

**ARTICLE 11 – TERMINATION**

If a Party is in default of carrying out of any of the obligations under the Agreement and fails to cure such default within three (3) months from receipt of a written notice to cure by the other Party, the other Party may by written notice, terminate the whole or any part of this Agreement.

**ARTICLE 12 – SETTLING OF DISPUTES – APPLICABLE LAW**

The Agreement shall be governed by and interpreted in accordance with French law.

Any dispute relating to the Agreement that the Parties cannot resolve amiably within a period of three (3) months, as from when the dispute arises, shall be brought before the competent courts of FRANCE.

**ARTICLE 13 – MISCELLANEOUS PROVISIONS**

Nothing in the Agreement shall be construed as granting the right to one of the Parties to bind the other Party without its previous written approval.

This Agreement shall not be amended or modified other than by separate written amendment, signed by the authorized representatives of the Parties.

A Party shall not assign its rights or duties under this Agreement without the prior written approval of the other Party.

Any failure, at any time, by a Party to enforce any provision of this Agreement or any extension of time granted shall not constitute a waiver of such provision or prejudice that Party’s right to enforce such provision at any subsequent time.

If any provision hereto is invalid or unenforceable, the remainders of this Agreement shall remain in full force and effect and the Parties shall negotiate in good faith to replace invalid or unenforceable provisions, with provisions that are valid and enforceable and effectuate insofar as possible the basic purposes of the invalid or unenforceable provisions.

**IN WITHIN HEREOF**, the undersigned have executed this Agreement in two (2) counterparts, one (1) for each Party:

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| --- | --- |
| **For ONERA** | **For INAF** |
| Place : PalaiseauDate :Name: Jean LEGERTitle : General SecretarySignature | Place : FirenzeDate :Name: Maria Sofia RandichTitle : Director Signature |