AGREEMENT

between the European Space Agency and the European Union on the security and exchange of classified information

THE EUROPEAN SPACE AGENCY,

hereinafter referred to as 'ESA', represented by its Director-General,

and

THE EUROPEAN UNION,

hereinafter referred to as 'the EU', represented by the Presidency of the Council of the European Union,

Hereinafter referred to as 'the Parties',

HAVING REGARD to the Treaty on European Union,

HAVING REGARD to the Convention for the Establishment of a European Space Agency, which was signed in Paris on 30 May 1975 and entered into force on 30 October 1980,

HAVING REGARD to the Agreement between the States Parties to the Convention for the Establishment of a European Space Agency and the European Space Agency concerning the protection and exchange of classified information, which was signed in Paris on 19 August 2002 and entered into force on 20 June 2003,

CONSIDERING that ESA and the EU share the objectives to strengthen their own security in all ways,

CONSIDERING that ESA and the EU agree that cooperation should be developed between them on questions of common interest relating to security and that a resolution on European Space Policy was approved by both the Council of the European Union and the Council of ESA on 22 May 2007 which emphasises, inter alia, the need to improve synergies in the domain of security,

CONSIDERING that, in this context, a permanent need therefore exists to exchange classified information between ESA and the EU,

RECOGNISING that full and effective consultation and cooperation may require access to ESA and EU classified information, as well as the exchange of classified information between ESA and the EU,

CONSCIOUS of the fact that such access to and exchange of classified information requires appropriate security measures,

HAVE AGREED AS FOLLOWS:

Article 1

In order to fulfil the objectives of strengthening the security of each of the Parties in all ways, the Agreement between the European Space Agency and the European Union on the security and exchange of classified information (hereinafter the Agreement) shall apply to classified information as defined in Article 2 provided or exchanged between the Parties.

Article 2

For the purposes of this Agreement, 'classified information' shall mean any information (namely knowledge which may be communicated in whatever form) or material, including documents, determined by either Party to require protection against unauthorised disclosure and which has been so designated by a security classification (hereinafter classified information).

Article 3

For the purposes of this Agreement, (a) 'ESA' shall mean the European Space Agency;
EU shall mean the Council of the European Union (hereinafter the Council), the Secretary-General/High Representative and the General Secretariat of the Council, and the Commission of the European Communities (hereinafter the European Commission).

Article 4
Each Party shall:

(a) protect and safeguard classified information subject to this Agreement provided by one Party to the other or exchanged between them;

(b) ensure that classified information provided or exchanged under this Agreement keeps the security classification given to it by the providing Party. The receiving Party shall protect and safeguard such classified information according to the provisions set out in its own security regulations for classified information holding an equivalent security classification, as specified in the security arrangements to be established pursuant to Article 11;

(c) not use such classified information subject to this Agreement for purposes other than those established by the providing Party;

(d) not disclose such classified information subject to this Agreement to third parties, or to any EU institution or entity not mentioned in Article 3, without the prior consent of the providing Party;

(e) not allow access to such classified information to individuals unless they have a need to know and, where needed, have been security-cleared to the necessary level.

Article 5
1. Classified information may be disclosed or released, in accordance with the principle of originator control, by one Party (the providing Party), to the other Party (the receiving Party).

2. Release or disclosure of classified information to recipients other than those referred to in Article 3 shall require a decision by the receiving Party after obtaining the written consent of the providing Party, in accordance with the principle of originator control as defined in its security regulations.

3. In implementing paragraphs 1 and 2, no generic release shall be possible unless procedures are established and agreed between the Parties regarding certain categories of information, relevant to their operational requirements.

Article 6
Each of the Parties, and entities thereof as defined in Article 3 of this Agreement, shall ensure that it has a security system and security measures in place, based on the basic principles and minimum standards of security laid down in its respective rules or regulations, and reflected in the arrangements to be established pursuant to Article 11, in order to ensure that an equivalent level of protection is applied to classified information subject to this Agreement.

Article 7
1. The Parties shall ensure that all persons who in the conduct of their official duties require access, or whose duties or functions may afford access, to classified information provided or exchanged under this Agreement are appropriately security-cleared, where required, before granting them access to such classified information.

2. The security clearance procedures shall be designed to determine whether an individual may, taking into account his or her loyalty, trustworthiness and reliability, have access to classified information.

Article 8
The Parties shall provide mutual assistance with regard to the security of classified information subject to this Agreement and matters of common security interest. Reciprocal security consultations and inspections shall be conducted by the authorities referred to in Article 11 to assess the effectiveness of the security arrangements within their respective responsibility to be established pursuant to that Article.

Article 9
1. For the purpose of this Agreement

(a) As regards the EU:

all correspondence shall be sent to the Council at the following address:

Council of the European Union
Chief Registry Officer
Rue de la Loi/Wetstraat, 175
B-1048 Brussels.

All correspondence shall be forwarded by the Chief Registry Officer of the Council to the Member States and to the European Commission subject to paragraph 2.
(b) As regards ESA,

all correspondence shall be sent to the following address:

ESA Security Office
Via Galileo Galilei
I-00044 Frascati.

2. Exceptionally, correspondence from one Party which is accessible to only specific competent officials, organs or services of that Party may, for operational reasons, be addressed and be accessible to only specific competent officials, organs or services of the other Party specifically designated as recipients, taking into account their competencies and according to the need-to-know principle. As far as the EU is concerned, this correspondence shall be transmitted through the Chief Registry Officer of the Council, or the Chief Registry Officer of the European Commission Security Directorate when such information is addressed to the European Commission. As far as ESA is concerned, such correspondence shall be transmitted through the ESA Security Office.

Article 10

The Director-General of ESA, and the Secretary-General of the Council and the Member of the European Commission responsible for security matters shall oversee the implementation of this Agreement.

Article 11

1. In order to implement this Agreement, security arrangements shall be established between the three authorities designated in paragraphs 2, 3 and 4 in order to lay down the standards for the reciprocal security protection and safeguarding of classified information provided or exchanged under this Agreement.

2. The ESA Security Office, under the authority of the Director-General of ESA, shall develop the security arrangements for the protection and safeguarding of classified information provided to or exchanged with ESA under this Agreement.

3. The Security Office of the General Secretariat of the Council, under the direction and on behalf of the Secretary-General of the Council, acting in the name of the Council and under its authority shall develop the security arrangements for the protection and safeguarding of classified information provided to or exchanged with the European Union under this Agreement.

4. The European Commission Security Directorate, acting under the authority of the Member of the Commission responsible for security matters, shall develop the security arrangements for the protection and safeguarding of classified information provided or exchanged under this Agreement within the European Commission and its premises.

5. For ESA, the security arrangements referred to in paragraph 1 shall be subject to approval by its Council.

6. For the EU, the security arrangements referred to in paragraph 1 shall be subject to approval by the Council Security Committee.

Article 12

The authorities referred to in Article 11 shall establish procedures to be followed in the event of proven or suspected compromise of classified information subject to this Agreement, including notification to the other Party of the circumstances and action taken.

Article 13

Each Party shall be responsible for bearing its own costs incurred in implementing this Agreement.

Article 14

Prior to providing or exchanging classified information subject to this Agreement between the Parties, the responsible security authorities referred to in Article 11 shall agree that the receiving Party is able to protect and safeguard the information subject to this Agreement in a way consistent with the arrangements to be established pursuant to that Article.

Article 15

This Agreement shall not prevent the Parties from concluding other Agreements relating to the provision or exchange of classified information subject to this Agreement provided that they do not conflict with the provisions of this Agreement.

Article 16

Any differences between ESA and the EU arising out of the interpretation or application of this Agreement shall be addressed by negotiation between the Parties.

Article 17

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.

2. Each Party shall notify the other Party of any changes in its rules and regulations that could affect the protection of classified information referred to in this Agreement.
3. This Agreement may be reviewed for consideration of possible amendments at the request of either Party.

4. Any amendment to this Agreement shall be made in writing only and by common agreement of the Parties. It shall enter into force upon mutual notification as provided under paragraph 1.

Article 18

This Agreement may be denounced by one Party by giving written notice of denunciation to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party, but shall not affect obligations already contracted under the provisions of this Agreement. In particular, all classified information provided or exchanged pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

In witness whereof the undersigned, respectively duly authorised, have signed this Agreement.

Done at Brussels, this 18th day of July 2008 in two copies each in the English language.

For the European Union
Secretary-General
J. SOLANA MADARIAGA

For the European Space Agency
Director-General
J.-J. DORDAIN