

Subcontract No. D/565/67338910 to ESA Contract No. 4000143632/24/I-EB

**Subcontract No. D/565/67338910
To ESA Contract No. 4000143632/24/I-EB**

with

**Institute of Experimental Physics Slovak Academy of
Sciences**

ESA Entity Code: 1000025275

**“ESA SOLID MAGNETIC SCIENCE CLUSTER - RESEARCH
OPPORTUNITIES: 4D IONOSPHERE”**

Theme 1: “Quiet” ionosphere

SUBCONTRACT

Between:

DEUTSCHES ZENTRUM FÜR LUFT- UND RAUMFAHRT e.V.
(hereinafter called "the Prime Contractor" or "DLR"),

whose Registered Office is at:

Linder Höhe
D-51147 Cologne
Germany

represented by its Executive Board,

Acting through its German Remote Sensing Data Center
Located at: Münchener Str. 20, 82234 Wessling, Germany

of the one part,

and:

Institute of Experimental Physics Slovak Academy of Sciences
(hereinafter called "the Subcontractor" or "IEP-SAS"),

whose Registered Office is at:

Watsonova 47,
040 01, Košice,
SK- Slovakia

represented by its Director, doc. RNDr. Zuzana Gažová, DrSc.

of the other part,

the following has been agreed between the Prime Contractor and the Subcontractor hereinafter also referred to individually as "Party" and collectively as the "Parties":

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DEFINITIONS

- "Kick-Off Payment"** means a payment foreseen in the Subcontract intended to provide the Subcontractor with liquidity to allow the initiation of the contractual works.
- "Agency's Own Requirements"** means 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.
- "Day"** means calendar day.
- "Force Majeure"** means an event which is, unforeseeable, unavoidable and external at the time of Subcontract signature, occurs beyond the control of the affected Party and renders the performance of the Subcontract impossible for the affected Party, including but not limited to:
Acts of God, Governmental Administrative Acts or omissions, consequences of natural disasters, epidemics, war hostilities, terrorist attacks.
- "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 or office including all rights in information, data, blueprints, plans, diagrams, models, formulae and specifications together with all copyright, unregistered trademarks, design rights, data base rights, topography rights, know how and trade secrets or equivalent rights or rights of action anywhere in the world.
- "Legitimate Commercial Interests"** means an interest the Subcontractor can demonstrate which is important to its ability to commercially exploit Intellectual Property Rights arising from work performed under the Subcontract for a defined period of time which includes but is not limited to an economic position vis-a-vis a competitor, loss of profits or survival of an undertaking.
- "Member State"** means a State which is Party to the Convention of the European Space Agency in accordance with Articles XX and XXII of the said Convention.
- "Participating States"** means a Member or non-Member State participating in a given Agency programme according to Article V.1 (a) and (b) of the European Space Agency Convention.

“Participating State’s Own Public Requirements”

means a public programme in the field of space research and technology and their space applications fully funded or funded to a substantial extent by the Participating State.

“Persons and Bodies”

means any individual, partnership, company, research organisation or legal entity under the jurisdiction of a Participating State which, when relevant, meets the criteria set out in Article II (3) of Annex V to the European Space Agency Convention.

“Progress Payment”

means a payment that is made against:
(a) Successful achievement, certified in writing by the DLR’s representatives, of a milestone defined in the milestone payment plan of a fixed price contract;
(b) Cost reports approved by the DLR in a cost reimbursement contract for a period agreed in the Subcontract.

“Registered Intellectual Property Rights”

means all rights granted by law through registration with an authority or office (whether actually registered or in the form of applications) including all registered patents, utility models, designs, topography rights, domain names and trademarks or equivalent rights and rights of action anywhere in the world.

“Subcontract”

means an agreement established in writing the subject of which is any activity carried out to- or for the Agency through its Prime Contractor (here DLR) in exchange of a price or another consideration, including any amendment to such agreement via a Contract Change Notice (“CCN”).

“Subcontractor”

means the economic operator who is under contract to a Contractor (here DLR as Prime Contractor) of the Agency to provide supplies or services in support of a contract placed by the Agency.

“Third Party”

means a natural or legal person not having signed the Subcontract.

ARTICLE 1 - SUBJECT OF THE SUBCONTRACT; GENERAL TERMS OF EXECUTION

- 1.1. The Subcontractor, as further described in the Statement of Work in Appendix 1 hereto, undertakes to participate in the activity "Theme 1: "Quiet" ionosphere", to perform its work in accordance with the defined tasks allocated to each member of the Consortium (DLR and its subcontractors) (all hereafter referred to as "the Work") and to deliver all its contributions to the items listed in Article 2 of this Subcontract.

The Subcontractor's contribution consists of performing the defined tasks under the following Work Packages:

- WP 1000: Scientific requirement consolidation (as Contributor)
- WP 2100: Space Weather (SWE) dataset for quiet ionosphere conditions (as Responsible)
- WP 2300: Collect and preprocess ground-based datasets (as Contributor)
- WP 3200: Ground-based data processing and aggregating, derivation of (wave) indices (as Contributor)
- WP 3300: Statistical analysis and case studies with aggregated SWARM data and derived ground-based data products (as Contributor)
- WP 6000: Scientific Coordination, collaboration, and outreach (as Contributor)
- WP 7000: Presentation of work on conferences and peer-reviewed publication (as Contributor)

- 1.2. The Work shall be performed in accordance with the provisions stated in the following documents, listed in order of precedence in case of conflict:

- a) The specific Articles of this Subcontract with its PDCC Annex;
- b) Appendix 1 hereto: the Agency's Statement of Work, reference ESA-EOP-SD-SOW-0450, issue 1, revision 0, dated 25/07/2023;
- c) The Subcontractor's Proposal consisting of the provided PSS Forms, not attached hereto but known to both Parties.

1.3 General Terms of Execution

- 1.3.1 The Subcontractor's own sales conditions shall not apply.

- 1.3.2 The language of this Subcontract and of all communications hereunder shall be English. The substantive law according to which this Subcontract shall be construed is the law of Germany.

- 1.3.3 The Parties shall use their best endeavours to amicably settle any dispute arising out of the Subcontract.

Failing an attempt towards an amicable settlement, all disputes shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one (1) or three (3) arbitrators designated in conformity with such Rules.

The Arbitration Tribunal shall sit in Cologne, Germany. The Tribunal's award shall be final, binding on the Parties and no appeal shall lie against it. The enforcement of the award shall be governed by the rules of procedure in force in the state/ country in which the award is to be executed.

- 1.3.4 The Subcontractor shall be fully responsible towards the Prime Contractor for the proper execution of its Work.

The Subcontractor shall have the same rights and obligations in relation to the work to be performed under the Subcontract that the Prime Contractor has agreed in relation to the Work performed under the Main Contract.

Notwithstanding the normal communication lines within the consortium, and the overall responsibility of the DLR to ensure proper and timely contractualisation and payments throughout the consortium, the DLR ensures in accordance with the Main Contract that below provisions are duly reflected in this Subcontract:

Should the Subcontractor encounter serious difficulties in the process leading to:

- (i) timely payment of due invoices (i.e. related to a milestone already achieved) to be made by the DLR, or
- (ii) contractual coverage of activities already kicked-off,

the Subcontractor may directly contact the Agency at: indirectpayments@esa.int

In doing so, the Subcontractor shall attach the Standard Contact Form available at: <https://esastar-publication.sso.esa.int/supportingDocumentation> properly filled in or provide the same information in the body of the email.

- 1.3.5 Any publicity material prepared by the Subcontractor related to an activity performed by the Subcontractor in the context of this Subcontract shall acknowledge that the activity is/was carried out "under a programme of, and funded by, the European Space Agency". It shall display the ESA logo if the Agency/DLR so requires. It shall also carry a disclaimer stating that the view expressed in such publications can in no way be taken to reflect the official opinion of the European Space Agency.
- 1.3.6 The Subcontractor shall, in accordance with the Agency's Policy on the Prevention, Detection and Investigation of Fraud, to the extent allowed by applicable national law, cooperate with the Agency's investigation team in any investigation of fraud initiated by the Agency and inform its personnel of their obligation to cooperate accordingly.
- 1.3.7 This Subcontract shall enter into force upon the Kick-Off Meeting held on 24th January, 2024 and its signature by both Parties.

ARTICLE 2 – DELIVERY REQUIREMENTS; PLACE AND DATE OF DELIVERY

2.1 General

- 2.1.1 Delivery shall be considered as effected only when the relevant deliverable items are in the DLR's possession. The Prime Contractor is then in charge to deliver the whole deliverable items to the Agency.
- 2.1.2 Should it seem likely that the originally specified delivery date(s) as per the defined tasks under the attributed Work Packages described in Article 1.1 above may be exceeded, the Subcontractor shall immediately notify the DLR in writing and provide a detailed justification for the delay.
- 2.1.3 No price adjustment in favour of the Subcontractor will be applicable for the period of delay in delivery.

No penalty to be deducted from the Subcontract price shall apply in case of late delivery.

Should the DLR conclude that the delays in delivery have impaired the intended objectives of the Work, the provisions of Article 5.5 below shall apply.

- 2.1.4 The Subcontractor shall be responsible for the appropriate marking, packing, package labelling, insurance, freight, carriage and delivery relative to all deliverable items due hereunder and shall bear any cost relative to all of the above. Deliverable items shall furthermore be packed to guard against loss, damage or deterioration during transport and delivery. If found damaged or defective upon delivery, the Prime Contractor reserves the right to return the affected items at the Subcontractor's expenses.

Should in the execution of this Subcontract a need arise to provide the Prime Contractor with information which is subject to export control laws and regulations, the Subcontractor shall be responsible to ensure in all cases that such information is passed on to the Prime Contractor in strict compliance with the provisions of such export control laws and regulations.

- 2.1.5 In the event of an alleged delay in delivery due to Force Majeure, the Subcontractor shall report to the Prime Contractor the Force Majeure event and its immediate consequences within one (1) week after its occurrence. The Subcontractor shall bear the burden of proof for the existence, duration and consequences of Force Majeure, such proof to be provided within one (1) month from the occurrence of the Force Majeure event.

In case of Force Majeure, the Subcontractor shall not be considered at default and its obligations under the Subcontract shall be suspended during the Force Majeure event. The Subcontractor shall make reasonable efforts to mitigate the impact on the schedule and the performance of its contractual obligations.

The Subcontractor is informed that Force Majeure event at Subcontractor's level shall be considered a case of Force Majeure for the performance of the Prime Contractor's obligations, if the Prime Contractor proves that the delay in the delivery of the equipment or works covered by the Subcontract due to the Force Majeure event had an unavoidable impact on the final delivery dates stipulated in the Main Contract.

In case of Force Majeure, an extension of the time-limit for execution or a postponement of delivery dates shall be granted in writing by the Agency through the Prime Contractor.

If the delay due to the Force Majeure exceeds three (3) months, the Parties are entitled to terminate the Subcontract by giving not less than two (2) months' written notice to the other Party, unless the Parties agree to modify the Subcontract in order to take into account the effects of the Force Majeure.

In case of termination due to Force Majeure, the amount to be paid shall be calculated as per Articles 5.6.2 and 5.6.4. No other payments, compensation or indemnities shall be due by the Prime Contractor to the Subcontractor.

2.2 Acceptance and Rejection

The acceptance by the DLR/Agency of the deliverables shall be declared upon verification, first by the Prime Contractor and finally by the Agency, that the Work has been performed in compliance with the Agency's and Prime Contractor's requirements and that the required results have been achieved. The said deliverables shall be considered as accepted in the absence of an explicit reaction in respect to the same, by the Agency, within one (1) calendar month counting from the time of submission for acceptance.

The provisions of Article 5.5 below shall apply in this respect.

2.3 Deliverable Documents

The Subcontractor shall, during the performance of this Subcontract, deliver all documentation and reports in the format and quantities agreed with the Prime Contractor.

These shall be sent to the DLR's Technical Officer mentioned in Article 5.1, unless otherwise specified, in accordance with the following specific provisions:

- 2.3.1 ° The Subcontractor is informed that the draft versions of the final documents as defined in section 3.5 of Appendix 1 shall be submitted by the DLR for approval, in electronic format, to the Agency's Technical Officer, not later than the dates specified in Appendix 1.

As a result, the Subcontractor undertakes to meet the delivery date(s) agreed with the DLR's Technical Officer, as per the defined tasks under the attributed Work Packages and deliver all documentation and reports in due time to enable the Prime Contractor to meet its obligations as described above.

The Subcontractor shall submit its contributions, to the DLR's Technical Officer according to the schedule agreed with him and in advance prior to the respective submission to the Agency.

° The Subcontractor is informed that the finalised versions thereof shall be issued not later than four (4) weeks after the approval by the Agency of the draft versions as specified in Appendix 1.

If revisions are expected and needed from the Subcontractor, it shall submit all necessary information in an appropriate timing to the DLR's Technical Officer in order to enable the Prime Contractor to incorporate the necessary modifications into the finalised versions.

- 2.3.2 The Subcontractor is informed that the signed electronic copy of the Contract Closure Documentation (Appendix 1, Annex A) shall be delivered by the Prime Contractor to the Agency not later than the time of submitting the invoice for the Final Settlement (Article 4.1.3 here below).

As a result, the Subcontractor undertakes to deliver all necessary information, documentation and reports in due time to the DLR's Technical Officer to enable the Prime Contractor to complete the necessary Contract Closure Documentation and meet its obligations as described above.

2.4 Other Deliverables

The Subcontractor is informed that the Dataset of suitable products based on satellite and ground-based observing systems, in situ data and relevant ancillary information collected by the Prime Contractor in the frame of Task 2 (Appendix 1) shall be made accessible on a project webpage and described in detail in a user manual.

As a result, the Subcontractor shall submit its contributions, to the DLR's Technical Officer in the format and according to the schedule agreed with him and in advance prior to the respective submission to the Agency.

2.5 Contribution to EO Open Science Catalogue

The Subcontractor is informed that the resulting EO-based products (e.g., EO experimental datasets) and resulting knowledge (e.g. reports, major deliverables, project presentations, education and outreach material, open code) shall be made discoverable to the public

(scientific community and general public) by ensuring their publication in an Open Science catalogue hosted and operated by ESA.

The Catalogue shall facilitate the discovery of the scientific outputs and results produced, datasets developed and, where applicable, published in the frame of this activity.

ARTICLE 3 – PRICE

3.1 The total price of this Subcontract amounts to:

39.950 EUR

(Thirty-nine thousand and nine Hundred fifty Euro)
plus the currently valid Value Added Tax, if applicable

The Subcontractor is informed that the Agency may decide that certain items produced or purchased under the Main Contract and the Subcontract during its implementation (see Article 7 below) shall become ESA Fixed Assets. Such items shall be identified as becoming ESA Fixed Assets by means of a Contract Change Notice.

The above-mentioned price is hereby defined as a Firm Fixed Price and as such, it shall not be subject to any adjustment or revision by reason of the actual costs incurred by the Subcontractor in the performance of this Subcontract.

3.2 Any amount stated above does not include any Value Added Taxes ("VAT") or import duties in the Member States of the Agency.

3.3 The price is stated as being Delivered Duty Paid ("DDP") for all deliverables, exclusive of import duties and VAT in accordance with the Incoterms® 2020, to the addressee(s) mentioned, or referred to, in Article 5 of this Subcontract. Reference to the Incoterms® in this provision is exclusively for the purpose of price definition. The price furthermore includes all costs relative to the Subcontractor's obligations under Article 2.1.4 above.

ARTICLE 4 – PAYMENTS AND INVOICING

4.1 Payments

Payments shall be made within thirty (30) calendar days of receipt of the required documents and fulfilment of the requirements as specified in Articles 4.1.1 - 4.1.3 below. Only upon fulfilment of these requirements shall the Prime Contractor regard the invoice as due.

Requirements to be fulfilled:

4.1.1 Kick-Off Payment:

- Kick-Off Payment Request (if any): to be submitted after signature of this Subcontract by both Parties and the Kick-Off Meeting held. The Kick-Off Payment constitutes a debt of the Subcontractor to the Prime Contractor until it has been set-off against subsequent milestone(s) as shown in Article 4.2 here below.

4.1.2 Progress Payment(s):

- Milestone Achievement Confirmation ("MAC") (hereinafter referred to as "confirmation") with supporting documentation as necessary, submitted by the

Subcontractor. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Article 4.2 here below;
and

- Invoice

4.1.3 Final settlement:

- Confirmation, submitted by the Subcontractor with supporting documentation as necessary. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Article 4.2 here below;

and

- Invoice;

and

- Delivery, by the DLR and final acceptance by the Agency, of all due items and fulfilment of all other obligations in accordance with the terms of this Subcontract;

and

- Signed Contract Closure Documentation (using the template provided in Appendix 1, Annex A) to be submitted by the DLR (with Subcontractor's support/input if necessary) to the Agency.

Payments shall be made according to the provisions hereunder:

4.1.4 The Prime Contractor shall credit the account of the Subcontractor to his benefit. The Prime Contractor shall be responsible for approving or rejecting, within ten (10) calendar days of receipt, the relevant Subcontractor's invoices and related supporting documents (e.g. MACs, Cost Reports). The Prime Contractor shall be responsible for paying the accounts of its Subcontractor, in accordance with the applicable law and normal commercial practice.

The Agency and/or the Prime Contractor shall be afforded all the necessary visibility, whether remotely or by means of inspection of the Subcontractor's premises, in order to ascertain the progress of the Work prior to authorising the relevant payment.

4.1.5 If applicable, invoices shall separately show all due taxes and/or duties.

4.1.6 In the event that the achievement of a milestone is delayed but the milestone is partially met at the milestone planning date foreseen, the Prime Contractor may as an exception, effect a payment against an approved confirmation of the partially achieved milestone, not exceeding the value of the Work performed at the date of payment.

4.1.7 When releasing the payment for a given milestone, if applicable, the Prime Contractor's payment shall be made after due deduction of the corresponding off-set of the Kick-Off Payment as per conditions of Article 4.2 here below.

In case of partial payment(s), the Prime Contractor shall deduct from the corresponding invoice(s) relative to the same milestone any outstanding amount of the Kick-Off Payment still to be off-set.

4.1.8 Payment shall only be due if the invoice is issued and transferred in accordance with the following requirements. It is the Parties' understanding that invoices which do not correspond to these requirements do not constitute delay of payment:

E-Invoicing Portal:

Due to Regulation on Electronic Invoicing in Public Procurement (E-Rechnungsverordnung, ERechV) the DLR accepts, from 27th November 2020 on, only electronically issued and via the Federal E-Invoicing-Portal submitted invoices (E-Invoices). E-Invoices must be submitted with the following information via the E-Invoicing-Portal:

<https://xrechnung-bdr.de>

Routing-ID: 992-03005-81

Subcontract Number: D/565/67338910

4.1.9 Payments shall be made by the Prime Contractor in EURO to the account specified by the Subcontractor. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). The Parties agree that payments shall be considered as effected by the Prime Contractor on time if the DLR's orders of payment reach the DLR's bank within the payment period stipulated in Article 4.1 above.

4.1.10 Any special charges related to the execution of payments shall be borne by the Subcontractor.

4.2 The following Payment Plan is agreed for this Subcontract:

Milestone Payment Plan:

Milestone (MS) Description	Schedule Date	Payments from DLR to Subcontractor (in Euro)
Progress (MS 1): Upon successful completion of WP1000, 2100, 2200, 2300, 3100, 3200 and/or successful review and acceptance of all related deliverable items.	24 October 2024	13.982
Progress (MS 2): Upon successful completion of WP3300, WP3400, WP4000, WP5000, WP6000, WP7000 and/or successful review and acceptance of all related deliverable items.	24 April 2025	13.983
Final Settlement (MS 3): Upon the Agency's acceptance of all deliverable items due under the ESA Contract and the Prime Contractor and Subcontractor's fulfilment of all other contractual obligations including submission of the signed Contract Closure Documentation.	24 January 2026	11.985
TOTAL		39.950

Kick-Off Payment:

Kick-Off Payment (in Euro)	Offset against	Offset by Euro	Condition to release of the Kick-Off Payment
7.990	MS 2 MS 3	3.995 3.995	Upon signature of the Subcontract by both Parties and the Kick-Off Meeting held

ARTICLE 5 – SPECIFIC PROVISIONS

5.1 Representatives of the Parties during Subcontract Execution

5.1.1 The Prime Contractor's representatives

a) Dr. Lisa Küchelbacher for technical matters or a person duly authorised by her ("Technical Officer"). All correspondence for technical matters will be addressed as follows:

	To	With copy to
Name	Lisa Küchelbacher	Sabine Wüst
Telephone		
Email		
Address	DLR e.V. Muenchener Str. 20 82234 Wessling, Germany	DLR e.V. Muenchener Str. 20 82234 Wessling, Germany

b) Mr. Thierry Renard for contractual and administrative matters or a person duly authorised by him ("Contracts Officer"). All correspondence for contractual and administrative matters (with exception of invoices as mentioned in Article 4) will be addressed as follows:

	To	With copy to
Name	Thierry Renard	Lisa Küchelbacher
Telephone		
Email		
Address	DLR e.V. Procurement for Third-Party Funding (Projects) Muenchener Str. 20 82234 Wessling, Germany	DLR e.V. Muenchener Str. 20 82234 Wessling, Germany

c) Personal Data Protection matters shall be addressed to the Data Protection contact point as follows:

	To
Name	Uwe Gorschuetz
Telephone	
Email	

Address	DLR e.V. Linder Hoehe 55147 Cologne, Germany
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5.1.2 The Subcontractor's representatives

a) Mr. Šimon Mackovjak for technical matters or a person duly authorised by him ("Technical Officer"). All correspondence for technical matters will be addressed as follows:

	To:	With copy to:
Name	Šimon Mackovjak	Michaela Doliničová
Telephone No.		
e-mail address		
Mail Address	Watsonova 47 040 01 Košice Slovakia	Watsonova 47 040 01 Košice Slovakia

b) Mr. Šimon Mackovjak for contractual and administrative matters or a person duly authorised by him ("Contracts Officer"). All correspondence for contractual and administrative matters will be addressed as follows:

	To:	With copy to:
Name	Šimon Mackovjak	Michaela Doliničová
Telephone No.		
e-mail address		
Mail Address	Watsonova 47 040 01 Košice Slovakia	Watsonova 47 040 01 Košice Slovakia

c) Personal Data Protection matters shall be addressed to the Data Protection contact point as follows:

	To:
Name	Judita Pribišová
Telephone No.	
e-mail address	
Mail Address	Watsonova 47 040 01 Košice Slovakia

5.1.3 Communications related to the Subcontract affecting its terms and conditions shall only bind the Parties, if signed by the DLR's and the Subcontractor's duly Authorised Representatives.

The Parties agree that digital signature of this Subcontract shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Subcontract.

5.2 Infringement of the Law - Infringement of Third Party rights

- 5.2.1 The Prime Contractor shall not be responsible if the Subcontractor infringes the laws or statutes of its country or of any other country whatsoever.
- 5.2.2 In the event of a reasonable suspicion of infringement of any patent rights and other Intellectual Property Rights of a Third Party, the Work being performed under this Subcontract shall be stopped immediately. Assessment of the suspicion shall be performed by the Subcontractor and if confirmed, both Parties shall agree on a new approach to achieve the objectives of this Subcontract, either by obtaining the applicable licence(s) from Third Party(ies) by the Subcontractor and/or by signing a Contract Change Notice (CCN) agreed upon between both Parties, in order to avoid the infringement. The purpose of the CCN shall be either to (i) restart the Work, if plausible due under the changed circumstances; or to (ii) terminate the Subcontract, in accordance with Article 5.5.3 hereunder, if the infringement cannot be avoided.

Notwithstanding the above, the Subcontractor shall indemnify the Prime Contractor from and against all claims, proceedings, damages, costs and expenses arising from infringement or alleged infringement of any patent rights and other Intellectual Property Rights of a Third Party with respect to the Work under this Subcontract. This obligation does not extend to infringements resulting from the use of documents, patterns, drawings or items supplied by the Agency and/or the Prime Contractor or from a modification or combination of the deliverables due hereunder made by the Agency and/or the Prime Contractor after their acceptance.

5.3 Liabilities

- 5.3.1 Claims between the Parties in respect of damages to staff and goods occurring during the execution of the Subcontract shall be settled in the following manner:
- 5.3.1.1 Claims for injuries, including death, sustained by the Parties' representatives or employees (staff) by virtue of their involvement in the Subcontract shall be settled in accordance with the Law governing the Subcontract.
- 5.3.1.2 Claims for damage caused by one of the Parties to goods owned by the other Party shall be settled in accordance with the Law governing the Subcontract. Except in case of gross negligence or wilful misconduct, the total aggregate liability of either Party for damage to goods owned by the other Party shall not exceed the amount which is quoted in the Subcontract as the total Subcontract price.
- 5.3.2 Except in case of gross negligence and wilful misconduct, the Parties shall not be liable towards each other for consequential damages sustained by the Parties, arising from and during the execution of the Subcontract. For the sake of clarity and as an example, consequential damages include, but are not limited to: loss of contract, income or revenue; loss of profit or interests; loss of financing; loss of customer; loss of availability and use of facilities; loss of availability and use of employees' productivity or loss of services of such persons; loss of opportunity; loss of rental expenses.

5.4 Items made available (IMA) by the Agency and/or the Prime Contractor

It is not foreseen that the Agency or the Prime Contractor will make any items available to the Subcontractor.

5.5 Prime Contractor's Rights in Case of Subcontractor's Under-Performance

- 5.5.1.1 Should any of the results of the Work fail to meet the agreed requirements and/or specifications, the Prime Contractor reserves the right to reject such results and require their resubmission following an iteration of the relevant Work by the Subcontractor at no additional charge.
- 5.5.1.2 Should any of the results of the Work fail to meet any of the agreed requirements and/ or specifications to such an extent as to seriously jeopardise the performance of this Subcontract and/ or to defeat its objectives, the Prime Contractor reserves the right to terminate this Subcontract by giving written notice by registered mail.
- 5.5.2 Should the Subcontractor fail to obtain an export authorisation from the competent national authority, the Prime Contractor shall have the right to terminate this Subcontract without further notice.
- 5.5.3 Termination of this Subcontract as specified above shall entail no compensation being due to the Subcontractor other than the amounts corresponding to the Milestone Payments already made hereunder at the time of serving of the termination notice.
Any amounts corresponding to Kick-Off Payment not entirely offset hereunder shall remain payable to the Prime Contractor.
- 5.6 Termination without fault of the Subcontractor
- 5.6.1 The Prime Contractor shall have the right at any time to terminate this Subcontract either wholly or in part by giving written notice by registered mail. In the case of termination of a Subcontract by the Prime Contractor without fault of the Subcontractor, the Subcontractor shall on receipt of the DLR's instructions, forthwith take the necessary steps to implement them. The Parties shall use their best efforts to mitigate the consequences of the termination. The period to be allowed to implement them shall be agreed between the Parties but shall not exceed three (3) Months.
- 5.6.2 Subject to the Subcontractor conforming with the instructions referred in Article 5.6.1, the Prime Contractor shall take over from the Subcontractor at a fair and reasonable price all finished parts not yet delivered to the Prime Contractor, all unused and undamaged material, bought-out components and items in the course of manufacture in the possession of the Subcontractor and properly obtained by or supplied to the Subcontractor for the performance of the Subcontract, except such materials, bought-out components and items in the course of manufacture as the Subcontractor shall, with the agreement of the Prime Contractor, elect to retain.
- 5.6.3 a) The Prime Contractor shall indemnify the Subcontractor against such part of any loss of profit as is attributable to the termination of the Subcontract and against any damage resulting from the termination of the Subcontract, in particular against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Subcontractor and are related to the Subcontract, in so far as the said commitments, liabilities or expenditure would otherwise, subject to the conditions stated in Article 5.6.1, represent a loss by the Subcontractor by reason of the termination of the Subcontract.
- b) The amount of compensation payable under Article 5.6.3 a) shall be fixed on the basis of evidence produced by the Subcontractor and accepted by the Prime Contractor. It shall take account of the proportion of the Subcontract completed and shall be consistent with the provisions of Article 5.6.4.

5.6.4 The Prime Contractor shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Subcontractor under the Subcontract, exceeds the total price for the Work set forth in the Subcontract.

5.7 Changes to this Subcontract

This Subcontract does not foresee any changes increasing the scope or price of the Work, except as foreseen in Article 5.8 below. Any modification hereto shall, in any case, require the Prime Contractor's and finally, the Agency's prior written approval.

5.7.1 The Agency and/or the Prime Contractor reserve(s) the right at any time to request a change to the requirements covered by the Main Contract / Subcontract. The Agency and the Prime Contractor may also accept changes proposed by the Subcontractor. The requesting Party shall communicate all change requests to the other Party in writing through the Parties' Representatives indicated in Article 5.1 above.

5.7.2 The cost impact relative to any change resulting from a request, by the Agency and/or the Prime Contractor, to modify the requirements covered by the Main Contract / Subcontract shall be borne by the Agency and/or the Prime Contractor. The Subcontractor shall be responsible for the consequences and shall bear the cost of any other change.

5.7.3 When responding to a change request issued by the Agency and/or the Prime Contractor or as a means to propose changes to the Prime Contractor, the Subcontractor shall submit a committing change proposal including a detailed quotation of the effects of the change on the contractual Work, price, schedule, deliverable items and any other contractual terms and conditions.

5.7.4 Upon evaluation and acceptance by the Agency and/or the Prime Contractor of a change proposal, any amendment to this Subcontract shall be introduced in the form of a Contract Change Notice (CCN) according to the CCN form attached in Appendix 3. In case of rejection, the Prime Contractor shall inform the Subcontractor accordingly, together with the reasons for the rejection.

5.8 New Collaborative Research (Cluster Collaboration)

The Subcontractor is informed that, within the first year of the ESA Contract, the Prime Contractor is entitled to submit a signed proposal to propose the execution of a collaborative research project as stated in Appendix 1.

Such proposal shall be submitted under Firm Fixed Price Conditions, within a maximum budget of 100,000 Euro and for a maximum total duration of 12 months.

The content of the proposal shall include: PSS forms A2 and A8, Work Package Description, contractual delivery dates and overall planning, milestones, etc.

Should the participation of the Subcontractor be required, the latter will be informed by the Prime Contractor in order to provide the necessary documents concerning its contribution to the proposal.

Should the Agency decide to authorize the execution of the proposed project, it will be formalized via CCN, as stated in Article 5.7 above. The Agency does not commit to authorized any proposal submitted by the Prime Contractor.

If the proposal submitted by the Prime Contractor foresees personnel working on site ESA premises (e.g., research visits), the provisions foreseen in Article 8 shall be made applicable.

ARTICLE 6 – INTELLECTUAL PROPERTY RIGHTS

6.1 Information to be provided by the Subcontractor – Protection of information

6.1.1 Information, data, reports and results arising from Work performed under this Subcontract shall be delivered to the Agency through the Prime Contractor. The Agency shall have the right to make such information, data, reports and results available to the Participating States and any Persons and Bodies under their jurisdiction, to use on the terms set forth in the following clauses.

6.1.2 For the purpose of this Subcontract, “Proprietary Sensitive Information” shall mean information corresponding to business related information (e.g. business plans) and/or Intellectual Property Rights vesting in an entity, the uncontrolled dissemination of which is likely to impair the entity’s long-term ability to use and exploit the aforesaid and/or to maintain a competitive advantage.

The Subcontractor shall not mark any (electronic) documentation as Proprietary Sensitive Information, unless agreed in advance with the Agency through the Prime Contractor in writing. Any request from the Subcontractor shall be submitted in writing and accompanied by an appropriate justification.

6.1.3 Neither Party shall disclose any documentation obtained from the other Party, and which both Parties recognise as being Proprietary Sensitive Information without the other Party’s previous written authorisation. Without prejudice to the foregoing and limited to the purpose and scope of this Subcontract, both Parties may circulate such documentation to their employees or collaborators that require the said documentation for the sole purpose of complying with, or inspecting the progress of, this Subcontract.

6.1.4 The obligations provided in Articles 6.1.2 and 6.1.3 shall not apply to (electronic) documentation which:

- at the time of circulation has already entered in public domain or which after circulation enter in public domain other than through a breach of the Subcontract;
- at the time of circulation is already known by the receiving Party and is not hindered by any obligation not to circulate;
- is later acquired by the receiving Party from another source and is not hindered by any obligation not to circulate; or
- is required to be circulated by law or order of a court of competent jurisdiction.

6.2 Ownership and Use of Intellectual Property Rights

6.2.1 Ownership of Intellectual Property Rights

The Subcontractor shall own all Intellectual Property Rights and have the right to apply for, and to own, any Registered Intellectual Property Rights arising from Work performed under this Subcontract. The Subcontractor shall as soon as possible report to the Prime Contractor any results arising from such a Work which may in its opinion be protected as

Registered Intellectual Property Rights and state whether it intends to apply for such protection. At the Subcontractor's specific request in order to allow for filing of patent applications, the Prime Contractor shall not disclose any relevant information and results for a period of twelve (12) months from the date it was reported to the Prime Contractor.

The Subcontractor shall subsequently inform the Prime Contractor of any application to register such results arising from Work performed under this Subcontract and, within two (2) months of the date of filing, provide the Prime Contractor with all details on that application. The Agency shall have an irrevocable right to use the information used in that application, for its own requirements on the terms set out in Article 6.2.2 below but, unless agreed otherwise with the Subcontractor, the Prime Contractor shall not disclose such information until publication of the registration application.

6.2.2 Use of Intellectual Property Rights

All Intellectual Property Rights arising from Work performed under the Subcontract shall be available to:

- a) the Prime Contractor only as far as required for making them available to the Agency, Participating States and Persons and Bodies, to use on a free of charge, worldwide licence, with the right to disseminate and/or to grant sub-licences, for the Agency's Own Requirements.

For the avoidance of doubt, the term "use" for the purposes of software and/or hardware (design) shall include, but not be limited to, use to operate, integrate, validate, maintain, modify and upgrade items developed under the Subcontract.

In view of the objectives of this activity, the Subcontractor is informed that the Agency explicitly reserves the right to widely disseminate any output of the activity, partial or otherwise, both during the execution of this ESA Contract or after its end, without any restriction.

In particular, the resulting EO-based products (e.g., EO experimental datasets) and resulting knowledge (e.g. reports, major deliverables, project presentations, education and outreach material, open code) shall be made discoverable to the public (scientific community and general public) by ensuring their publication in an Open Science catalogue hosted and operated by ESA (<https://opensciencedata.esa.int>).

The Catalogue shall facilitate the discovery of the scientific outputs and results produced, datasets developed and, where applicable, published in the frame of this activity.

- b) Participating States as well as any Persons and Bodies under their jurisdiction, to use on "favourable conditions" (i.e. more favourable for the purchaser than market conditions but still allowing reasonable profit for the seller) for the Participating States' Own Public Requirements.

- c) Academic and research institutions within the Participating States to use on a free licence without the right to grant sub-licences, for their own scientific research purposes, excluding commercial purposes and providing the Subcontractor agrees such use is not contrary to its Legitimate Commercial Interests.

6.3 Background Intellectual Property

6.3.1 Background Intellectual Property - Definition

For the purpose of this Subcontract, "Background Intellectual Property" means all Intellectual Property, belonging to the Subcontractor or to a Third Party, which:

- a) has not been generated under contract with the Agency or the Prime Contractor either prior to or during execution of this Subcontract, and
- b) is relevant to the Work carried out under this Subcontract, and
- c) the Subcontractor uses to achieve the objectives of this Subcontract, and
- d) is delivered to the Agency and/or the Prime Contractor to enable it to use, operate, copy, distribute and sublicense the deliverable items due under this Subcontract as specified in the Agency's and Prime Contractor's requirements, and
- e) is duly identified as such in this Subcontract.

Conversely, "Foreground Intellectual Property" means all Intellectual Property generated through Work carried out under, or directly or indirectly funded through, this Subcontract.

6.3.2 Use of Background Intellectual Property

The Subcontractor has confirmed that all results of this Subcontract (or any part thereof) shall be deemed and treated as not containing any Background Intellectual Property.

Nevertheless, should the Subcontractor unilaterally decide to use existing Intellectual Property to achieve the objectives of this Subcontract, all results of this Subcontract (or any part thereof) shall be deemed and treated as Foreground Intellectual Property not containing any Background Intellectual Property. The Subcontractor shall grant to the Agency and to the Prime Contractor for the time and good execution of the Project, and/or ensure that the Agency and the Prime Contractor for the time and good execution of the Project, be granted, all the necessary rights in this respect.

6.4 The free licences provided for the benefit of ESA

The free licences provided on Intellectual Property arising from Work performed under this Subcontract and/or Background Intellectual Property indicated in Article 6.3 for the benefit of ESA shall be deemed granted through signature of the present Subcontract and without the need to implement a separate licence.

The Subcontractor agrees that the same rights are granted to the Prime Contractor to the extent necessary in order to monitor and verify the performance of the Work under this Subcontract and, more generally, as necessary for the fulfilment of its obligations towards the Agency in the frame of this ESA Project.

6.5 Transfer outside the ESA Member States

Any transfer of Intellectual Property Rights or any product, process, application or result arising from Work performed under the Subcontract by the Subcontractor to any entity in a non-Member State or any international organisation shall comply with all applicable laws including all export control laws, regulations, rules and procedures and any relevant international agreements relating to the export of goods and services.

ARTICLE 7 – MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE SUBCONTRACT

The following provisions apply to any items other than those items which fall within the scope of Article 2 of the Subcontract.

The Subcontractor shall specify, record, manage and control any and all Customer items and ESA Fixed Assets under Construction (reference is made to Article 3.1 above) that are subject to this Subcontract. Such items are:

- i. items produced or purchased under the Subcontract, including electronic components, special jigs, tools, test equipment, and which are paid for under the Subcontract with an individual or batch value (value of group of items) in the national currency equivalent to, or above five-thousand (5,000) Euro;
- ii. if any, items identified as becoming ESA Fixed Assets in Article 3 above or in a subsequent CCN;
- iii. Items Made Available by the Agency, if any (see Article 5.4 of the Subcontract).

The Subcontractor shall operate an inventory control system (“Inventory Control System”) of all the above-mentioned items and shall mark them as falling under this Article of the Subcontract.

The Inventory Control System shall:

- record the existence, location, operational Status and condition of all inventory items, and
- record the value and estimated life duration of all inventory items, and
- record changes in inventory value, and
- enable financial reconciliation to be made and status reports to be prepared for incorporation of the relevant data into the Agency’s annual financial accounts.

The Subcontractor shall, as part of the Inventory Control System, maintain an Inventory/Fixed Asset Record (in an electronic tool of its choice) which shall, as a minimum, contain the Information as shown in Appendix 2 to this Subcontract.

The Inventory/Fixed Asset Record shall be kept updated by the Subcontractor. It shall be made available to the Agency through the Prime Contractor upon request but as a minimum yearly during the execution of the Subcontract (and at completion of each Project Phase as per ECSS-M-ST-10 if applicable). A final Consolidated record shall be submitted with the final contractual deliverables as foreseen in Appendix 2 to this Subcontract.

If the Inventory/Fixed Asset Record also includes any of those items which fall within the scope of Article 2 of the Subcontract, these items are to be clearly set apart.

Items, for which no place of delivery has been identified in Article 2 of this Subcontract, are subject to the following provisions:

Upon completion of the Work specified in the Subcontract, the Agency through the Prime Contractor shall take decisions regarding the final destination and final ownership of each item listed in the Inventory/Fixed Asset Record.

The Agency shall be free to choose amongst the following options with respect to the final destination and final ownership of such items:

- a) the right to claim delivery to the Agency through the Prime Contractor and transfer of ownership (the latter if applicable) - with issue of appropriate instructions concerning packing and shipment (at the Subcontractor’s expenses),

b) the right to claim or retain ownership and to negotiate with the Subcontractor a Loan agreement if the Subcontractor is interested in keeping and using an item, with loan conditions making the Subcontractor responsible for the custody, the delayed delivery and the risks involved (at the Subcontractor's expenses),

c) the right to extend the custody of an item to the Subcontractor and to postpone its delivery to the Agency through the Prime Contractor and the associated transfer of ownership - on conditions to be negotiated,

d) the renunciation of any rights to claim delivery and to claim transfer of ownership, leaving definitively the item in the possession and in the ownership of the Subcontractor, with or without financial compensation for the Agency (e.g. repurchase by the Subcontractor) and with or without special Instruction,

e) the right to request the Subcontractor to dispose of an item on conditions to be negotiated.

Should the Agency decide to transfer an ESA Fixed Asset to a Third Party or to dispose of the Fixed Asset, the Subcontractor shall provide the full inventory Information of the Fixed Asset to the Agency through the Prime Contractor and complete the transfer or disposal forms to be provided by the Agency through the Prime Contractor upon request by the Subcontractor. The information to be given by the Subcontractor in the forms shall be agreed with the Agency through the Prime Contractor.

The decisions taken by the Agency shall lead to instructions or negotiations, as the case may be, and the results shall be recorded in the relevant sections of the Contract Closure Documentation (CCD) as found in Annex A to Appendix 1 to the Subcontract.

The CCD shall not be finalised and signed before disposition of all items has been given by the Agency and recorded in the documentation.

ARTICLE 8 – PROVISIONS FOR PERSONEL WORKING ON-SITE

As foreseen in Article 5.8, the Subcontractor is informed that the Prime Contractor may submit a proposal to perform a collaborative research project, which may include work to be performed on-site ESA premises (e.g., research visits) in ESRIN, Italy or other ESA establishments. The notion of "on-site" shall be construed as encompassing the situation of personnel working remotely and having access to ESA IT network, database and systems.

Should the Subcontractor contribute to this collaborative research project, the following provisions shall apply in relation to all personnel assigned by the Subcontractor to carry out this on-site activities, or in relation to any other Subcontractor personnel who work on-site on ESA premises under the Subcontract:

8.1 Compliance with Laws, Requirements and Regulations

8.1.1 The Subcontractor shall comply with all laws, regulations, and legal requirements applicable at ESRIN, Italy where the services under the present Subcontract will be executed.

8.1.2 The proposed activity as defined in Article 1.1 shall be performed in compliance with Italian law in force, including but not limited to article 1655 and subsequent ones of the Italian Civil Code and article 29 of Legislative Decree No. 276/2003.

- 8.1.3 The Subcontractor shall be fully responsible for complying with all existing and future national, communal or provincial laws or decrees, rules or regulations in force in Italy where the work under the Subcontract will be performed.
- 8.1.4 The Subcontractor undertakes to comply strictly with all relevant social, labour and tax laws, related to its personnel for all periods of employment falling under the Subcontract (such as, but not limited to: work and residence permits, social security registration and contributions, health, hygiene, safety, training, insurances including unemployment insurance). In particular, the Subcontractor undertakes to register its staff with the applicable taxation authorities and to duly exercise its statutory powers and fulfil its statutory obligations by withholding from salary payments to its staff all forms of income tax and social security payments which it is entitled to withhold and to pay over the amounts withheld to the appropriate authorities.
- 8.1.5 In the cases where the said laws, decrees, rules and regulations imply an obligation to be fulfilled directly by the Subcontractor's personnel (such as but not limited to medical insurance, etc.), the Subcontractor undertakes to enforce such laws, decrees, rules and regulations towards its personnel by introducing the necessary clauses in its employment agreements with its personnel.
- 8.1.6 Upon request of the Agency through the Prime Contractor, the Subcontractor shall provide all necessary documentation to demonstrate compliance with the above requirements. This documentation includes, but is not limited to, the "DURC", the "Libro Unico del Lavoro" and the "Modello F24". The delivery of the documents mentioned in this clause is condition for the payment of the compensation due by the Prime Contractor to the Subcontractor.
- 8.1.7 ESA, the Prime Contractor and the Subcontractor shall comply with all the Italian law provisions, regulations, standards and good practices in respect of health and safety at work matter, including but not limited to Law no. 81/2008.
- 8.1.8 The Subcontractor shall indemnify and hold the Prime Contractor harmless from any claim or complaint concerning any governmental or local fines, taxes, excises or assessments arising from the execution of this Subcontract.
- 8.1.9 The Subcontractor shall hold harmless the Prime Contractor from any liabilities arising from the non-compliance with provisions of law, collective bargaining agreements and regulations. The Subcontractor, furthermore, shall hold harmless the Prime Contractor in the case the latter is requested, directly or on a joint-liability basis, both in Court or out of Court: (i) to pay sums, such as but not limited to for remuneration, tax, social security contributions or sanctions (criminal, administrative, fiscal or of different nature) in relation to the Subcontractor's employees engaged in the performance of the services under the Subcontract; (ii) to pay compensation for damages ascribed to fault of malice of the Subcontractor; (iii) to pay compensation for damages occurred to the Subcontractor's employees engaged in the performance of the service and which are not covered by INAIL.

This release and hold harmless obligation include, also, any all negative consequences, including for legal expenses, which may derive to the Prime Contractor, both in court or out of court, from claims or requests brought by the Subcontractor's employees engaged in the execution of the activity, including those aimed to obtain the establishment of a subordinate employment relationship with the Prime Contractor. The Subcontractor expressly authorises the Prime Contractor to offset any of these possible payments with any sum due, for any reason, by the Prime Contractor to the Subcontractor.

8.2 Confidentiality and conflict of interest

- 8.2.1 The Agency through the Prime Contractor is committed to avoiding any circumstance in which the Subcontractor's personnel may be confronted with a possible Conflict of Interest, as defined in Article 22 of the Agency's Procurement Regulations. Nevertheless, to complete certain tasks, the Subcontractor personnel may become aware of Prime Contractor, ESA or Third party confidential or restricted information and may have to deal with activities related to work carried out by industry. Therefore, the Agency through the Prime Contractor requires all Subcontractor personnel to sign the Non-Disclosure and Non-Conflict of Interest Undertaking provided by ESA and to respect the confidentiality thus agreed to at all times. The Non-Disclosure and Non-Conflict of Interest Undertaking is also intended to restrict the disclosure of this information to the Subcontractor staff's own employer. The originals of all signed Non-Disclosure and Non-Conflict of Interest Undertakings shall be provided to the Prime Contractor's Technical Officer upon request. Copies thereof shall be kept in the Subcontractor's files.
- 8.2.2 The Subcontractor shall make sure that all Subcontractor personnel selected to work on-site under this Subcontract notify in writing the Prime Contractor's Technical Officer prior to start of the work in case of any possible Conflict of Interest.
- 8.2.3 The Subcontractor shall make sure that all Subcontractor personnel selected to deliver on-site work under this Subcontract who have a possible Conflict of Interest, do not work on the matter constituting the possible Conflict of Interest, unless explicitly authorised in writing by the Agency through the Prime Contractor. Any such authorisation shall only be given after the Subcontractor and the relevant member of the Subcontractor's personnel have provided all relevant facts to the Prime Contractor and the authorisation shall be subject to the condition that the facts provided are correct and complete.
- 8.2.4 The Subcontractor shall ensure all the Subcontractor personnel who are selected to work under this Subcontract comply with the above provisions.
- 8.2.5 In case of proven evidence of a violation of the Non-Disclosure and Non-Conflict of Interest Undertaking by one of the Subcontractor's staff, the Prime Contractor reserves the right to proceed as follows:
- make a joint assessment of the facts together with the Subcontractor;
 - the Subcontract or, at the Prime Contractor's discretion, the respective Work Package, under which the respective Subcontractor's personnel is working, may be terminated by the Prime Contractor with immediate effect;
 - for the respective Subcontractor's personnel, access to ESA premises may be denied;
 - any damage resulting from this violation, which is caused to the Agency, the Prime Contractor and/or any Third party, shall be compensated by the Subcontractor at the Prime Contractor's request.
- 8.2.6 The Subcontractor is informed that the Prime Contractor has undertaken in the ESA Contract to ensure that all subcontractors also comply with the above provisions.
- 8.2.7 The Subcontractor shall bear all consequences resulting from a non-compliance with the above provisions and shall indemnify and hold harmless the Prime Contractor from any such consequences.

8.3 Health and Safety and Basic Security Screening

8.3.1 ESA Health and Safety and Security Regulations.

8.3.1.1 The Subcontractor shall ensure that Subcontractor personnel strictly adhere to the ESA Health and Safety and Security Regulations and related instructions (latest versions in force through the execution of the Subcontract), whether working on ESA premises or working for the purpose of this Subcontract on the premises of another ESA-commissioned Contractor.

8.3.1.2 The Subcontractor shall ensure that each member of Subcontractor personnel complies with all regulations under this Subcontract.

8.3.1.3 The Subcontractor shall ensure that each member of Subcontractor personnel working on ESA premises under this Subcontract, or working on the premises of another ESA-commissioned Contractor for the purpose of this Subcontract:

- has read and understood the ESA Health, Safety and Security Regulations, the ESA Security Directives in their latest approved revision; the ESA Personal Data Protection Framework; and the European Space Agency's IT Services User Policy, and

- has signed the Declaration of Compliance provided by ESA through the Prime Contractor before such employee starts working at ESA premises under the Subcontract or starts working on the premises of another ESA-commissioned Contractor for the purpose of this Subcontract.

8.3.1.4 The Subcontractor shall keep all signed declarations in its files and shall present them to the Prime Contractor on request.

8.3.1.5 The provisions made by the Agency for the security and safety of its staff and its premises cannot be construed as specific protection of the Subcontractor's offices, its own personnel or activities, or an acceptance of any responsibility.

8.3.1.6 In case any of the Subcontractor's personnel raises a claim for compensation of damages incurred in the course of her/his work under this Subcontract, be it personal injuries or damages to her/his property, the Subcontractor undertakes to assist the Prime Contractor, if so requested, in the handling of such claim and the Subcontractor shall indemnify and hold harmless the Prime Contractor from any such claim, unless such claim was caused by gross negligence or an intentional act by the Prime Contractor, the Agency or the Agency's staff.

8.3.1.7 Basic Security Screening for Subcontractor's staff working on-site the Agency's Premises.

The following requirements apply, where the Subcontractor's personnel shall be working on-site at the Agency's premises for a consecutive period of more than three months:

The Subcontractor is responsible for the execution of a basic security screening of any such personnel before such personnel starts working under the Subcontract.

The basic security screening shall be performed at the latest at take up duty of the Subcontractor's personnel and shall consist of at least the following verifications:

8.3.1.8 Identity verification: verification of a valid ID card or passport of concerned individual.

8.3.1.9 Verification of diploma, degree or certificates.

- a) Make a copy of the relevant diploma or degree.

b) Contact the relevant university or school to verify that the concerned person obtained his/her degree there.

8.3.1.10 Request the individual concerned to produce a formal statement of good conduct, issued by an official government instance, or – should local law not permit this – to have the candidate sign a statement of Non-Conviction and Good Conduct (template to be provided by ESA).

In case the formal statement of good conduct is not available at take up duty time, the Subcontractor's personnel shall be required to sign the statement of Non-conviction and Good Conduct in Appendix 10. Once the formal statement of good conduct is delivered to the employer, the Subcontractor shall send to the Prime Contractor the updated Security Verification Sheet.

8.3.1.11 Contact reference persons and/or previous employers.

8.3.1.12 The Security Verification Sheet (template to be provided by ESA) shall list all of the verifications made, the date of verification and the person having made the verification.

The Security Screening Verification Sheet for each individual shall be sent by surface mail in double, sealed envelopes, or by email, addressed to the attention of the Prime Contractor's Technical Officer indicated in the Subcontract.

The level of protection of the Security Verification Sheets within ESA will be the one corresponding to "ESA Unclassified – For ESA Official Use Only – Contains Personal Data". All other related documents related to the basic security screening (e.g., copies of diplomas, formal statement of good conduct, self-certification) shall be kept at the Subcontractor's premises and made available to the Agency and the Prime Contractor upon request as such files are auditable by the ESA Security Office.

The Agency through the Prime Contractor reserves the right to request a periodical update of the above information.

8.3.1.13 Access to ESA IT Network, Databases, Systems and Software

Where Subcontractor's personnel perform work on Agency premises or remotely and this work involves access to ESA IT network, database and systems and the use of software, the following provisions shall apply:

1. The Subcontractor's personnel shall read and shall comply with and the European Space Agency's IT Services User Policy; they shall sign the Declaration of Compliance (template to be provided by ESA).

2. If the software is provided by the Agency, the required check, with the proper care normally used in the field, shall include running the software through any virus checker specified by the Agency.

3. The Subcontractor and its personnel shall not pass any software supplied by the Agency, or copy thereof, to any other party, including staff members of the Agency, unless expressly authorised by the Agency's Technical Representative.

4. The Subcontractor and its personnel shall be responsible for any damage to the Agency's computing facilities due to the wilful or negligent use of software contaminated by a virus.

5. The Subcontractor and its personnel shall not use any software, not obtained from the Agency, unless he has a Contractual right to use it, or it is in the public domain. If the software is supplied by the Agency, the Subcontractor may assume that the Agency has such a Contractual right, unless he has good reason to believe, or knows, otherwise. In such case he shall notify the Agency's Contractual representative.

Digitally signed by the Parties to this Subcontract,

In: Cologne

On: 23.02.2024

For: Deutsches Zentrum für Luft- und Raumfahrt (DLR)

**Marion Lenz-
Wendt**

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i.A. Marion Lenz-Wendt
Head of Department Procurement
for Third-Party Funding (Projects)

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Renard**

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i.A. Thierry Renard
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for Third-Party Funding (Projects)

In: Košice

On:

For: Institute of Experimental Physics Slovak Academy of Sciences

**Zuzana
Gažová**

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doc. RNDr. Zuzana Gažová, DrSc.
Director
Institute of Experimental Physics
Slovak Academy of Sciences

Personal Data "Controller to Controller" Annex (the "PDCC") of the European Space Agency ("ESA" or the "Agency")

The Subcontractor understands that this "Controller to Controller" Annex governs the processing of Personal Data exchanged by the Parties, acting as separate Controllers, in the frame of the Subcontract. Such Annex forms an integral part of the Subcontract and shall apply mutatis mutandis. The Subcontractor fully agrees with the fact that all the obligations arising from this Annex also apply to him according to the following Section 10.1 stating the "flow down principle" in the respective subcontracts.

Personal Data "Controller to Controller" Annex (the "PDCC") of the European Space Agency ("ESA" or the "Agency")

This "Controller to Controller" Annex governs the processing of Personal Data exchanged by the Parties, acting as separate Controllers, in the frame of the Contract. Such Annex forms an integral part of the Contract. In case of conflict between the terms and conditions of the Contract and the terms and conditions of this Annex, the terms and conditions of this Annex shall prevail.

This Annex survives the expiration or termination of the Contract for as long as the Personal Data are protected by the Data Privacy Regulations.

1. DEFINITIONS

The following specific definitions apply:

- (i) "Agreed Territory" (of Processing) means:
- a) ESA Member States, as they are listed in the ESA website at URL: https://www.esa.int/About_Us/Corporate_news/Member_States_Cooperating_States
 - b) European Union;
 - c) countries recognized by the European Commission as ensuring an Adequate Level of Protection of Personal Data under the European Union's legal framework.
- (ii) "Data Privacy Regulations" means respectively:
- a) ESA PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at URL: http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations
 - b) the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing which provide an Adequate Level of Protection under the ESA PDP Framework (e.g. EU Regulations in the field of personal data protection, including but not limited to the General Data Protection Regulation (Regulation (EU) nr. 2016/679) (hereinafter "GDPR").
- (iii) "Personnel" means:
- a) with respect to the Contractor: any employee, agent or representative acting under the responsibility of the Contractor or, if subcontracting is permitted, of Contractor's subcontractors;
 - b) with respect to ESA: any employee, agent or representative acting under the responsibility of ESA (e.g. staff members and seconded agents, consultants experts or employees of third parties).

With respect to terms used with capitals in this Annex (e.g. "Controller", "Personal Data" etc.) but not defined above, reference is made to the definitions set forth in the Data Privacy Regulations applicable according to Article 2 below.

2. GENERAL

- 2.1 Each Party is individually and separately responsible for complying with the level of protection resulting from its Data Privacy Regulations in relation to Personal Data, being recognised that:
- a) the Contractor is governed by the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing, which provide an Adequate Level of Protection under the ESA PDP Framework (e.g. EU Regulations in the field of personal data protection, including but not limited to the GDPR.
 - b) ESA is governed by PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at the URL: http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations
- 2.2 The Parties are considered separate Data Controllers of the Personal Data, with each Party being able to determine the purpose and means of Processing the Personal Data under its control in accordance with its privacy statement.
- 2.3 The Personal Data exchanged by the Parties in the frame of this Contract will only be processed for:
- a) the performance of the Contract, including implementation, management, monitoring, audits and the fulfilment of the obligations set out in this Annex;
 - b) the management of the relationship of the Parties in relation to the Contract, notably for administrative, financial, audit or for communication purposes;
 - c) the compliance with any legal or regulatory obligation to which a Party is subject;
 - d) the compliance, in case the performance of the Contract requires access to the Parties' premises, with the health, safety and security requirements, legal or regulatory obligations applicable to the respective Party in such matters.

3. PERSONAL DATA EXCHANGED BY THE PARTIES

In the performance of this Contract each Party may disclose to the other Party data which may qualify as "Personal Data" under its Data Privacy Regulations as follows:

- a) the Agency shall communicate to the Contractor only the Personal Data concerning ESA representatives/contact persons including name, work address, email and telephone numbers;
- b) the Contractor shall communicate to the

Agency only:

- (i) Personal Data concerning the Contractor's representatives/contact persons including name, work address, email and telephone numbers;
- (ii) Personal Data concerning the Contractor's key Personnel, including title, name, work address, email, telephone numbers, education, professional experience, description of the person's job and responsibilities and the precise assignment of the person to the activity under the Contract.
- (iii) Sensitive Personal Data concerning the Contractor's Personnel, performing work on-site ESA premises or having the need to access information provided by the Agency which is subject to security restrictions.

4. PARTY'S OBLIGATIONS

- 4.1 Each Party is individually and separately responsible for complying with the level of protection resulting from its Data Privacy Regulations in relation to Personal Data, including the collection and update of the Personal Data that it communicates to the other Party, the lawfulness and the quality of such Personal Data and for the means by which they were collected. Should the legal basis for the collection of the Personal Data cease to exist or the quality of the Personal Data be affected, the Party will inform the other Party without undue delay.
 - 4.2 The Parties shall preserve the rights and legal remedies of the Data Subject as recognised and protected in the Data Privacy Regulations applicable respectively to each Party. In particular, the Data Controller which disclosed the Personal Data to the other Party will respond to enquiries from Data Subjects and, as the case may be, from any competent authority concerning the data processing of the relevant Personal Data.
 - 4.3 In case the Parties engage Processors to support their internal operations, including the Processing of the Personal Data exchanged, it is the responsibility of that Party to ensure that its Processors assume obligations consistent with the Data Privacy Regulations applicable to the respective Party, in order to guarantee an adequate level of protection of Personal Data.
- #### 5. DATA RETENTION
- 5.1 The Parties shall not retain or process the Personal Data exchanged longer than is necessary to carry out the purpose described in Article 2.3 herein, unless required otherwise:
 - a) under the Data Privacy Regulations, (e.g. in the frame of audits, inspections and incidents) or
 - b) under the Party's statutory obligations.
 - 5.2 The retention period shall be defined in the privacy

notices of the Parties.

- 5.3 All Personal Data must be effectively destroyed/deleted upon expiration of the retention period, unless conservation of such data is required for compliance with any legal or regulatory obligation to which the Party having received the Personal Data from the other Party is subject.

6. CONFIDENTIALITY

The Parties shall ensure the confidentiality of the Personal Data processed by protecting them against unauthorized or unlawful access, acquisition, use and disclosure, in particular by:

- a) limiting access to the Personal Data of the other Party only to their Personnel, that:
 - are required or authorized to access such Personal Data;
 - have committed themselves to confidentiality or are under a statutory obligation of confidentiality;
 - have received the appropriate Personal Data protection training.
- b) taking into consideration, in terms of IT tools, product, applications, the principles of personal data protection by design and by default.

7. SECURITY

The Parties shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the Processing and to the nature, scope, context and purpose of the Processing, in order to ensure the following as appropriate:

- a) the on-going confidentiality, integrity, availability and resilience of Processing systems and services;
- b) measures to protect Personal Data from accidental, unlawful or unauthorized access, use, destruction, loss, modification or transfer.

8. DATA PROTECTION OFFICER/CONTACT POINT

For any Personal Data protection matters, the Parties shall involve their specific contact points identified in the Contract.

9. TRANSFER

The Party having received the other Party's Personal Data under the Contract shall Process (and have processed by its authorised subcontractors or sub-processors) such Personal Data only in the Agreed Territory of Processing. In case the Parties agreed otherwise, transfer of Personal Data outside the Agreed Territory shall only take place in accordance with Article 13 below.

10. SUBCONTRACTORS

10.1 The Contractor is authorised to disclose Personal Data received from the Agency to its Subcontractors provided that:

- a) subcontracting is specifically authorised by Contract and the Subcontractors are indicated in the Contract;
- b) all the general conditions set forth in this Annex are fulfilled; in particular the Processing of the Personal Data by the Subcontractors is performed for the purpose described in Article 2.3 herein and the Personal Data are not transferred outside the Agreed Territory.

10.2 Disclosure of the Agency's Personal Data to other third Parties requires prior approval of the Agency.

11. PERSONAL DATA BREACHES

11.1 After becoming aware of a Personal Data Protection Breach falling in its area of responsibility, and affecting the Personal Data communicated by the other Party, the Party shall notify the other Party within 48 hours.

11.2 The Parties will provide each other reasonable assistance to facilitate the handling of the Personal Data Breach and accurate information about the breach, in particular (but not only) in case a complaint is, or likely to be, lodged by a Data Subject in relation to the Breach.

12. LAW – DISPUTE RESOLUTION

Concerning Personal Data protection matters, notwithstanding any other provisions on the governing law set forth elsewhere in the Contract, the provisions set forth in the Data Privacy Regulations, as defined herein, will apply as mentioned in Article 2 herein and will prevail in case of conflict. Without prejudice to the foregoing, disputes between the Parties on Personal Data protection matters shall be settled in accordance with Article 1.3.3 of the Contract

13. EU STANDARD CONTRACTUAL CLAUSES

13.1. Under the ESA Personal Data Protection Framework, the transfer of Personal Data towards a country not recognized as offering an Adequate Level of Protection may only be done after being authorised by the ESA Data Protection Officer (DPO) and subject to "adequate safeguards with respect to the protection of the Personal Data and data subject's rights".

13.2. As "adequate safeguards", the Parties agreed to adopt the level of protection resulting from the

provisions of the EU Standard Contractual Clauses for the Transfer of Personal Data to Third Countries pursuant to Regulation (EU) 2016/679, in their latest version released / approved by the European Commission (hereinafter "EU SCC"), which shall be deemed included, by reference, in the Contract, together with the Annexes of EU SCC filled in as appropriate, subject always to the prevailing principles applicable in relation to ESA:

- a) the provisions of EU SCC will apply *mutatis mutandis*, only to the extent compatible with the specific statute of ESA as international intergovernmental organisation and always subject to the application of ESA Convention, in particular its Annex I "Privileges and immunities" and its legal framework, including by PDP Framework available at http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations, which shall prevail in particular in case of conflict, ambiguity or inconsistency;
- b) any provision of the EU SCC referring a dispute to a national court or another national or international forum is deemed not applicable, given that the Parties agree that:
 - (i) any Personal Data-related incidents or disputes shall be submitted to the independent Data Protection Supervisory Authority established by ESA Council Resolution, in which case the Rules of Procedure for the Data Protection Supervisory Authority, as set forth ESA PDP Framework, shall apply;
 - (ii) any other matter giving rise to a dispute shall be referred to arbitration as per Article 1.3.3 of the Contract.
- c) such transfer shall only take place after obtaining the written authorisation by the ESA Data Protection Officer (DPO) in consideration of the:
 - (i) annexes of the EU SCC, added to the Contract in particular:
 - Annex I.A [List of Parties : data exporter/data importer]
 - Annex I.B [Description of the transfer(s)]
 - Annex I.C [Competent Supervisory Authority]
 - Annex II [Technical and organisational measures, including Technical and Organisational Measures to Ensure the Security].
 - (ii) the following selected module and options provided by the EU SCC, which are contractually agreed to by the Parties are applicable:

Module One of the EU SCC: Transfer Controller to Controller

APPENDIX 1

**STATEMENT OF WORK
"ESA SOLID MAGNETIC SCIENCE CLUSTER - RESEARCH
OPPORTUNITIES: 4DIONOSPHERE - EXPRO+"**

reference ESA-EOP-SD-SOW-0450, issue 1, revision 0, dated 25/07/2023

APPENDIX 2

INVENTORY/FIXED ASSETS RECORD

1.1. Content of Electronic Inventory/Fixed Asset Record

The Subcontractor shall establish an electronic Inventory/Fixed Asset Record with, as a minimum, the following information:

For all items:

- Subcontract number
- unique item number
- confirmation that the item has been marked with the unique item number
- description of item
- part number/serial number/type code
- quantity
- System/Subsystem
- property owner
- manufacturer
- Classification (category - see section 1.2 below)
- acquisition value (i.e. original purchase price or price at contract signature as applicable)
- date of purchase or production ("in Service date" if not corresponding with date of purchase/production)
- in-service date
- foreseen useful life (to be agreed with ESA)
- physical location (e.g. facility, building, room)
- entity responsible for care and custody
- related WBS code or other identifier to be coordinated with the Agency)
- description and date of any change to the property item
- planned method of disposal (if applicable)

In addition to the above, the following information shall be added to those items that are identified as becoming ESA Fixed Assets in Article 3 of the Subcontract, as applicable.

- Acquisition value
revision of this value as a result of change(s) to the asset
- Impairment report of each ESA Fixed Asset remaining in the custody of the Subcontractor after its acceptance by ESA (using the template that will be provided by the Agency upon announcement by the Subcontractor that the item has been impaired)
- date of acceptance by ESA (planned date of acceptance)
- foreseen handling after ESA acceptance (e.g. transfer to ESA, continuing in custody of the Subcontractor)

1.2. Classification of Inventory/Fixed Assets items

For the purpose of Inventory/Fixed Asset Control, items shall be classified into five categories, according to the source and intended use of the items, as follows:

Source / Purpose	Supplier-acquired Items	Customer-furnished Items
Consumable items (e.g. parts, materials, supplies)	Class 1	Class 2
Capital items/production support equipment and tools (e.g. instruments, jigs, fixtures)	Class 3	Class 4
Items purchased by the Supplier or his lower tier suppliers on their own account but amortised under the Contract.	Class 5	

Note 1: Consumable items are parts, materials, supplies, components, modules, minor expendable tools, assemblies, units and Subsystems which through the production process lose their identity and are absorbed directly or indirectly by the system/product to be provided under the Subcontract.

Note 2: Consumable items in principle are not capitalised per item, however, before consumption they are identified as assets of the Agency under the collective term "Consumable".

Note 3: Capital items/production support equipment and tools are jigs, fixtures, devises, apparatus, instruments, machines, installations, technical facilities, buildings, Computer programmes, documentation, models, samples or any other item which, after their use in or in conjunction with the production process under the Subcontract, are expected to have a residual utility or other value for the Agency.

Note 4: Capital items have a useful life of more than one (1) year and are identified as individual items in the Supplier and its lower tier suppliers list of Agency's assets.

APPENDIX 3

CONTRACT CHANGE NOTICE

For submission of a change, the Subcontractor is informed that the Prime Contractor shall submit its proposal in the format of a CCN using the cover page included below. The form shall be filled with the following information as a minimum:

- The Prime Contractor's name and the ESA Contract number;
- The title of the area affected by the change (Work Package reference, new work, etc.);
- The name of the initiator of the change (Prime Contractor or ESA);
- The description of the change (including Work Package Descriptions, Work Breakdown Structure);
- The reason for the change;
- The price breakdown in Euro (€), if any (breakdown by company, Phase, etc., including PSS A2 and PSS A8 forms);
- The Milestone Payment Plan for the CCN, if any;
- Effect on other Contract provisions;
- Start of Work - end of Work (including contractual delivery dates and overall planning, milestones, etc.);
- A CCN Form, as per the format below, signed by the Prime Contractor's representatives.

The Prime Contractor shall, on request of the Agency, provide additional documentary evidence. At the request of either Party, the proposed change may be discussed at a Change Review Board, consisting of both the Contracts Officer and the Technical Officer of each Party.

If such a CCN signed between the Agency and the Prime Contractor also affects the Subcontractor, its provisions will be flowed-down and applied to the Subcontract.

	DIRECTORATE:	Contractor:	
		ESA Contract No. 4000143632/24/I-EB	
CONTRACT CHANGE NOTICE No.		DATE:	
TITLE OF AREA AFFECTED (WORK PACKAGE ETC):		WP REF:	
		INITIATOR OF CHANGE:	
DESCRIPTION OF CHANGE			
REASON FOR CHANGE			
PRICE BREAKDOWN (Currency)/PRICE-LEVEL			
EFFECT ON OTHER CONTRACT PROVISIONS		START OF WORK	
		END OF WORK	
CONTRACTOR'S PROJECT MANAGER:		CONTRACTOR'S CONTRACTS OFFICER:	
DATE:		DATE:	
[DISPOSITION RECORD OR OTHER AGREED CONDITION RECORDED WITH THE CCN APPROVAL]			
ESA TECHNICAL OFFICER:		ESA CONTRACTS OFFICER:	
DATE:		DATE:	