**SUBCONTRACT**

**For the EXECUTION OF ESA Contract No. 4000126708/19/NL/IA**

**Between**

**Institut de Physique du Globe de Paris,** (hereinafter called “IPGP”),

whose registered office is at:

1, rue Jussieu

75238 Paris Cedex 05

France

represented by its Director, Mr Marc Chaussidon,

of the one part,

**and**

**INSTITUTE OF ATMOSPHERIC PHYSICS** of Czech Academy of Science – (hereinafter called “IAP”),

whose registered office is at

Bocni II 1401

141 00 Prague

CZ-Czech Republic

represented by its Director, Mr Zbynek Sokol

of the other part,

**and**

**AGH UNIVERSITY OF SCIENCE AND TECHNOLOGY** – (hereinafter called “AGH”),

whose registered office is at

Mickiewicza 30

30-059 Krakow

PL-Poland

represented by its Dean of the Faculty of Computer Science, Electronics and Telecommunications, prof. Dr hab inz. Krzysztof Boryczko,

IAP and AGH collectively referred to as the “Sub-contractors”.

**the following has been agreed**

Upon signature of this contract (hereinafter referred to as the “Subcontract”) the parties hereby agree that each Sub-contractor will act as subcontractor of IPGP for the performance of the ESA Contract No. 4000126708/19/NL/IA - Swarm+ Coupling: High-Low Atmosphere Interactions.

The terms and conditions of the signed contract between IPGP and ESA ref. No. 4000126708/19/NL/IA (hereinafter referred to as “the Contract”), will be applicable mutatis mutandis between IPGP and each Sub-contractor with the specific amendments and/or replacements listed in the present document.

In particular, and unless otherwise stated in the following, one should

* Read “Subcontract” for “Contract”.
* Read “each Sub-contractor” for “Contractor”.
* Read “Contractor” for “ESA” or “the Agency”, except when mentioned in connection with ESA GCC, [AD-2].

All terms and conditions as defined in this “Subcontract” are in addition and without prejudice to the terms and conditions of the Contract.

# Applicable Documents

The work shall be performed in accordance with the following documents, listed in order of precedence, in case of conflict:

1. Contract between IPGP and ESA ref. No. 4000126708/19/NL/IA (hereinafter referred to as “the Contract”), Annex 1 to this document;
2. The General Clauses and Conditions for ESA Contracts (herein referred to as GCC), reference ESA/ REG/002, not attached hereto but known to both Parties and available on <http://emits.sso.esa.int> - "reference documentation" - "administrative documents", as amended by the Contract;
3. Appendix 1 to the Contract: The Statement of Work, reference ESA-EOPSM-SWRM-SOW-3403, issue 1, dated 07/09/2018 and its Annex A;
4. The articles of this Subcontract, including the Financial Conditions
5. Minutes of negotiation meeting on April 1st 2019, reference ILGEW \_M010419;
6. The proposal by IPGP and Subcontractors reference n. ES19200600XX in response to ESA AO/1-9514/18/NL/IA dated November 16, 2018.

All of these documents together constitute "the Contractual Baseline".

# Purpose of the Subcontract

2.1 Each Sub-Contractor undertakes, based on the ESA requirements as described in the Contract, [AD-1], to perform the work of the “Swarm+ Coupling: High-Low Atmosphere Interactions” as specified in this Subcontract, including its Applicable Documents, in particular the ESA SoW, [AD-3], Minute of negotiation [AD-5] and the Proposal [AD-6], and to make available for these tasks the necessary personnel, material, equipment and facilities.

Only the general sections and sections relevant to the tasks for which a Sub-Contractor is responsible shall be applicable to such Sub-Contractor .

2.2 Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Subcontract as may be reasonably required from it and in a manner of good faith as prescribed by French law.

2.3 Each Party undertakes to notify promptly to IPGP any significant information, fact, problem or delay likely to affect the Project.

2.4 Each Party shall promptly provide all information reasonably required by ESA or by IPGP to fulfill its obligations as defined in the Contract, or by a Party to carry out its tasks.

# Responsibility

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act.

# Intellectual Property Rights

In addition and without prejudice to the terms and conditions of the Contract (including but not limited to ESA’s rights on Results), the Parties agree to manage the intellectual property on results as follows:

4.1 Results means any (tangible or intangible) output of the Project such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated within the frame of the Project, as well as any rights attached to it, including intellectual property rights.

4.2 Results are owned by the Parties that generate them.

4.3 Unless otherwise agreed, in case of joint Results :

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and

- each of the joint owners shall be entitled to otherwise exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:

(a) at least 45 calendar days advance notice; and

(b) Fair and Reasonable compensation.

# Confidentiality - Publications

5.1 In addition and without prejudice to the terms and conditions of the Contract, the Parties agree to manage confidentiality as follows:

All information in whatever form or mode of transmission, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the « Swarm+ Coupling: High-Low Atmosphere Interactions » Project during its implementation and which has been explicitly marked as “confidential”, or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

The Recipients hereby undertake, for a period of 4 years after the end of the Subcontract (or without time limit when this information is marked as an ESA protected information) :

* not to use Confidential Information otherwise than for the purpose for which it was disclosed;
* not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
* to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
* to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for recording, the Recipients may however keep a copy for archival purposes only.

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and other researchers/personnel involved in the Project and shall ensure that their employees and other researchers/personnel involved in the Project remain so obliged, as far as reasonably possible, during and after the end of the Project and/or after the termination of employment.

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

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

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

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

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

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

5.2 In addition and without prejudice to the terms and conditions of the Contract, the Parties agree to manage publications as follows :

Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Contract in writing to IPGP and to the Party or Parties proposing the dissemination within 45 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted

An objection is justified if :

(a) the objecting Party suffers, or will suffer, disproportionately great harm by the dissemination activity; or

(b) the protection of the objecting Party's background knowledge or Results is adversely affected.

The objection has to include a precise request for necessary modifications.

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

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted.

# Duration of the Subcontract

The present Subcontract, shall start on May 14th, 2019 with scheduled end on September 14th, 2019.

The Contractor's decision to go ahead with the extension, if any, and the contractual implications shall be put in place by means of an amendment to be signed by the Parties.

# Price & Payment

## Price

The Price for each Subcontractor is defined according to Article 3 of the Contract.

## Payment

The Payment Plan is defined according to art. 4.2 of the Contract, IPGP distributing funding to Sub-Contractors according to each Sub-contractor’s share of the budget.

The advance payment constitutes debts of each Sub-Contractor to IPGP until it has been set-off against subsequent milestones as shown in the Contract.

All invoices shall be submitted to IPGP in two copies, including one original by mail to :

*xxxxxx*

and one copy by e-mail to : xxxxxxx

To be deemed valid, invoices shall include the following information:

*Project no. ESA/4000126708/19/NL/IA*

*Payment Milestone no., title and amount according to art. 4.2 of the Contract*

Only upon receipt and acceptance by IPGP of all deliverable items, if any, to be provided by the Sub-Contractor at the milestone date, of the services to be rendered and other obligations to be fulfilled by the Sub-contractor shall each invoice be regarded as due by IPGP.

Payments to each Sub-Contractor shall be made within thirty (30) calendar days of receipt of ESA funding by IPGP.

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

### Advance Payment

Advance Payment is due, and invoices shall be submitted by each Subcontractor after signature of this Subcontract by both parties.

### Final Settlement

Final settlement requires, and will follow:

* Invoices;
* Receipt and acceptance by IPGP of all deliverable items, of the services to be rendered and other obligations to be fulfilled, in accordance with the terms of the Subcontract;
* The Contract Closure Documentation using the template provided in Appendix 1, Annex A of the Contract.

In case of non-authorisation of the subsequent Phase by the Contractor at the end of a Phase, the last payment milestone of the last authorised Phase shall be deemed to constitute the Final Settlement of the Contract and all conditions associated to the Final Settlement shall be fulfilled for the payment of such milestone.

### Audit

In connection with its activities under the Subcontract, each Sub-contractor is responsible for keeping records of all documents necessary to diligently answer any ESA’s request as defined in the Contractual Baseline, including but not limited to ESA’s inspections and audits.

# Parties' representatives

For the purpose of this Subcontract, the Contractor's representatives are:

a) xxxxxx, for technical and managerial matters or other duly authorised person;

b) xxxxxx, for contractual and administrative matters or other duly authorised person;

All correspondence for the Contractor shall be addressed to:

*IPGP - Institut de Physique du Globe de Paris*

*1, rue Jussieu*

*75238 Paris Cedex 05*

*France*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Mail address, main telephone, fax, Internet** | **Name** | **Phone** | **Address** | **e-mail address** | **with copy to** |
| For technical/scientific purposes | xxxxxx | xxxxxx | xxxxxx | xxxxxx | xxxxxx |
| For legal / adminsitrative / financial purposes | xxxxxx | xxxxxx | xxxxxx | xxxxxx | xxxxxx |

All correspondence for the Sub-Contractors shall be addressed to:

For IAP - Institute of Atmospheric Physics:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Mail address, main telephone, fax, Internet** | **Name** | **Phone** | **Address** | **e-mail address** | **with copy to** |
| For technical /scientific purposes | xxxxxx | xxxxx | xxxxxx | xxxxxx | xxxxxx |
| For legal / adminsitrative / financial purposes | xxxxxx | xxxxxx | xxxxxx |  xxxxxx | xxxxxx |

For AGH – University of Science and Technology

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Mail address, main telephone, fax, Internet** | **Name** | **Phone** | **Address** | **e-mail address** | **with copy to** |
| For technical /scientific purposes | xxxxxx | xxxxxx  | xxxxxx | xxxxxx | xxxxxx |
| For legal / adminsitrative / financial purposes | xxxxxx | xxxxxx | xxxxxx |  xxxxxx |  xxxxxx |

# Intuitu personae

The Subcontract is executed intuitu personae. Consequently, no Party is authorised to transfer all or part of the rights and obligations hereunder to a third party without the prior and written agreement of the IPGP and of ESA.

# Governing Law

The Subcontract is governed by French law.

The parties shall endeavour to settle their disputes amicably.

All disputes between the Parties relating to the existence, validity, interpretation, performance and termination of this Subcontract or of any one of its clauses, which the Parties are unable to resolve amicably within a time limit of six months, shall be brought before the French courts having jurisdiction.

Done in three (3) originals, one for each Part of this Contract,

In: Paris

On: 14/05/2019

For IPGP :

Name: Marc Chaussidon

Signature:

Done in three (3) originals, one for each Part of this Contract,

In: Prague

On: 20 May 2019

For IAP :

Name: Zbynek Sokol

Signature:

Done in three (3) originals, one for each Part of this Contract,

In: Krakow

On: 04 June 2019

For AGH:

Name: Krzysztof Boryczko

Signature:

Přílohy této smlouvy jsou neveřejné.