

Subcontract No. D/565/67297693 to ESA Contract No. 4000133567/20/I-BG

**Subcontract No. D/565/67297693  
To ESA Contract No. 4000133567/20/I-BG**

**with**

**Institute of Atmospheric Physics of the Czech  
Academy of Sciences - IAP**

“Aeolus+ Innovation (Aeolus+ I)”

## 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 Institute DFD – ATM - OP

Located at: Münchener Strasse 20, 82234 Wessling, Germany

represented by its Director

of the one part,

and:

**Institute of Atmospheric Physics of the Czech Academy of Sciences**

(hereinafter called "the Subcontractor" or "IAP"),

whose Registered Office is at:

Bocni II 1401  
Prague 4, 14100  
Czech Republic

represented by its Director, Mr. Radan Huth

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**

<b>"Advance Payment"</b>	means a payment foreseen in the Subcontract intended to provide the Subcontractor with liquidity to allow the initiation of the contractual works.
<b>"Agency's Own Requirements"</b>	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.
<b>"Day"</b>	means calendar day.
<b>"Intellectual Property Rights"</b>	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.
<b>"Legitimate Commercial Interests"</b>	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.
<b>"Main Contract"</b>	means the ESA Contract No. 4000133567/20/I-BG signed between the Agency and the DLR.
<b>"Member State"</b>	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.
<b>"Participating States"</b>	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.
<b>"Participating State's Own Public Requirements"</b>	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 trade marks 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 via the 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) 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 undertakes to participate in the activity of the **"Aeolus+ Innovation (Aeolus+ I)"** project as described in the SoW (all hereafter referred to as "the Work") and to deliver the performance agreed with the Prime Contractor and all the items listed in Article 2 of this Subcontract.

For the Subcontractor, the Work consists of performing the defined tasks under the following Work Package:

- **WP 2200:** Reanalysis data (IAP as responsible)
- **WP 3400:** Validation (IAP as responsible)
- **WP 4100:** Demonstration and scientific evaluation of PP in case studies (IAP together with DLR)

- 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 EOP-SD-SOW-2018-069, issue 1, revision 1, dated 21.01.2020 (the "SoW");
- c) The Subcontractor's PSS Forms duly signed by IAP; part of the DLR's Proposal reference 3026651, dated 12.05.2020 as amended by the DLR's Points for clarification letter reference 3026651 dated 30.10.2020, 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 or three 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 the Work.

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

Notwithstanding the normal communication lines within the consortium, and the overall responsibility of the DLR to ensure proper and timely contractualization and processing of payments throughout the consortium, the DLR ensures that below provisions are duly reflected in all sub-contracts entered into for the purpose of the Main Contract signed with the Agency:

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,
- (ii) contractual coverage of activities already kicked-off,

the Subcontractor may directly contact the Agency at: [REDACTED]

In doing so, the Subcontractor shall attach the Standard Contact Form available at: [REDACTED]

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 Not applicable.
- 1.4 This Subcontract shall enter into force upon the Kick-Off Meeting held on 30<sup>th</sup> November 2020 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.
- 2.1.2 Should it seem likely that the originally specified delivery date(s) as per the defined tasks under the attributed Work Package 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.

Force Majeure event at Subcontractor's level shall be considered a case of Force Majeure for the performance of the DLR's obligations, if the DLR 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 signed with the Agency.

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 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 provided below.

In such case, 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.

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.

No other payments, compensation or indemnities shall be due by the Prime Contractor to the Subcontractor.



Either Party may implement Article 2.1.5 should unknown consequences of the COVID-19 outbreak at the time of signature of the present Subcontract affect the performance of its obligations, despite such event being known to the Parties at the time of Subcontract signature.

2.2 Acceptance and Rejection

The acceptance by the Prime Contractor of the deliverables shall be declared upon verification, by the Prime Contractor, that the Work has been performed in compliance with the 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 Prime Contractor, 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 specified in Appendix 1 and part of its defined Work, in the format and quantities specified therein and 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 (final report) as defined in section 3.5 of Appendix 1 shall be submitted for approval, in electronic format, by the DLR to the Agency's Technical Officer, not later than the date specified in Appendix 1.

As a result, the Subcontractor undertakes to meet the agreed delivery date(s) as per the defined tasks under the attributed Work Package described in Article 1.1 and deliver all documentation and reports in due time to allow the DLR to meet its obligations as described above.

The Subcontractor shall submit his contributions, to the Prime Contractor's Technical Officer according to the schedule agreed with him and not later than 15 days 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, he shall submit all the necessary information in an appropriate timing to the Prime Contractor's Technical Officer in order to allow DLR to incorporate the necessary modifications into the finalised versions.

- 2.3.2 The Contract Closure Documentation (Appendix 1, Annex A) shall be delivered in one (1) signed set of documentation each, to the DLR's Authorised Representatives not later than the time of submitting the invoice for the Final Settlement (Article 4.1.3 here below).

## 2.4 Other Deliverables

The Subcontractor is informed that the algorithms, webpages and technical data packages resulting from the Work hereunder and as defined in section 3.5 of Appendix 1 shall be delivered by the DLR to the Agency's Technical Officer, not later than the date specified in Appendix 1.

The said deliverables shall be delivered by the DLR in the format specified by the Agency in Appendix 1. Unless otherwise specified in Appendix 1, software shall be delivered in source as well as object code format.

The Subcontractor shall submit his contributions, to the Prime Contractor's Technical Officer according to the schedule agreed with him and in the format specified by him, not later than 15 days in advance prior to the respective submission to the Agency.

## **ARTICLE 3 – PRICE**

3.1 The total price of this Subcontract amounts to:

**44.896 EUR**

(Forty-four thousand eight hundred ninety-six Euro)

The Agency may decide that certain items produced or purchased under the Subcontract during its implementation shall become ESA Fixed Assets. Such items shall be identified as becoming ESA Fixed Assets through the means of a Contract Change Notice.

The abovementioned 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 added value taxes or import duties in the Member States of the Agency.

3.3 The price is stated as being "Delivery 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 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 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 Advance Payment:

- No Advance Payment is foreseen for this Subcontract.

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, and acceptance by the DLR and the Agency, of all due items and fulfilment of all other obligations in accordance with the terms of this Subcontract;
- Signed Contract Closure Documentation using the template provided in Appendix 1, Annex A.

Payments shall be made according to the provisions hereunder:

- 4.1.4 The DLR shall credit the account of the Subcontractor to the Subcontractor's benefit. The DLR 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 DLR shall be responsible for paying the accounts of the Subcontractor in accordance with the applicable law and normal commercial practice.

The Agency and/or the DLR 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 Advance Payment(s) 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 Advance Payment(s) still to be off-set.

4.1.8. 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:



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.

4.1.11 Not applicable

4.1.12 Not applicable

4.2 The following payment plan is agreed for this Subcontract:

<b>Milestone (MS) Description</b>	<b>Schedule Date</b>	<b>Payments from DLR to Subcontractor (in Euro)</b>
Progress (MS-1): Upon successful completion of WP 1000 or successful Agency's acceptance of all related deliverable items.	15 March 2021	8.980
Progress (MS-2): Upon successful completion of WP 2300 or successful Agency's acceptance of all related deliverable items.	15 June 2021	17.958
Progress (MS-3): Upon successful completion of WP 2000 or successful Agency's acceptance of all related deliverable items.	15 March 2022	13.469
Final Settlement (MS-4): Upon the Agency's acceptance of all deliverable items due under the Main Contract/Subcontract and the DLR's and Subcontractor's fulfilment of all other contractual obligations including submission of the signed Contract Closure Documentation.	15 June 2022	4.489
<b>TOTAL</b>		<b>44.896</b>

## **ARTICLE 5 – SPECIFIC PROVISIONS**

5.1 Representatives of the Parties during Subcontract Execution

5.1.1 The DLR's representatives

a) [REDACTED] 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	[REDACTED]	[REDACTED]
Telephone	[REDACTED]	[REDACTED]
Email	[REDACTED]	[REDACTED]
Address	[REDACTED]	[REDACTED]

b) [REDACTED] 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 4.1) will be addressed as follows:

	To	With copy to
Name	[REDACTED]	
Telephone	[REDACTED]	
Email	[REDACTED]	
Address	[REDACTED]	

c) [REDACTED] for Personal Data Protection matters or a person duly authorised by him. All correspondence for PDP matters will be addressed as follows:

	To
Name	[REDACTED]
Telephone	[REDACTED]
Email	[REDACTED]
Address	[REDACTED]

5.1.2 The Subcontractor's representatives

a) [REDACTED] 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	[REDACTED]	[REDACTED]
Telephone	[REDACTED]	[REDACTED]
Email	[REDACTED]	[REDACTED]
Address	[REDACTED]	[REDACTED]

b) [REDACTED] 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	[REDACTED]	[REDACTED]
Telephone	[REDACTED]	[REDACTED]
Email	[REDACTED]	[REDACTED]
Address	[REDACTED]	[REDACTED]

c) [REDACTED] for Personal Data Protection matters. All correspondence for PDP matters will be addressed as follows:

	To	With copy to
Name	[REDACTED]	
Telephone	[REDACTED]	
Email	[REDACTED]	
Address	[REDACTED]	

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 Third Parties, 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 restart the Work, if plausible due under the changed circumstances; or to 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 Third Parties 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 DLR or from a modification or

combination of the deliverables due hereunder made by the Agency and/or the DLR 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. The liability of either Party for damage to goods owned by the other Party, except in cases of gross negligence or wilful misconduct, shall however not exceed the amount which is quoted in the Subcontract as the total Contract 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 by the Agency and/or the DLR

It is not foreseen that the Agency and/or DLR will make any items available to the Subcontractor for the performance of the Work.

### 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.

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 Advance Payments not entirely offset hereunder shall remain payable to the Prime Contractor.

5.6 Changes to this Subcontract

- 5.6.1 The Agency and/or the Prime Contractor reserve the right at any time to request a change to the requirements covered by this Subcontract. 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.
- 5.6.2 The cost impact relative to any change resulting from a request, by the Agency and/or the DLR, to modify the requirements covered by this Subcontract shall be borne by the Agency and/or the DLR. The Subcontractor shall be responsible for the consequences and shall bear the cost of any other change.
- 5.6.3 When responding to a change request issued by the Agency and/or the DLR 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.
- 5.6.4 Upon evaluation and acceptance by the Agency and/or the DLR of a change proposal, any amendment to this Subcontract shall be introduced in the form of a Contract Change Notice (CCN form attached hereto in Appendix 3). In case of rejection, the Prime Contractor shall inform the Subcontractor accordingly, together with the reasons for the rejection.

**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 Prime Contractor and consecutively, to the Agency. 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 Prime Contractor. Any request from the Subcontractor shall be submitted in writing 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;
- which at the time of circulation is already known by the receiving party and is not hindered by any obligation not to circulate;
- which is later acquired by the receiving party from another source and is not hindered by any obligation not to circulate;
- which 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. It shall as soon as possible report to the Prime Contractor any results arising from such a Work which may in his 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 and/or the DLR 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 Agency and/or the DLR 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:

the Agency and the DLR, 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 and the DLR'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 Agency and/or the DLR explicitly reserves the right to widely disseminate any output of the activity, partial or otherwise, both during the execution of this Subcontract or after its end, without any restriction.

### 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 and/or the DLR 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 the DLR to enable it to use, operate, copy, distribute and sub-license the deliverable items due under this Subcontract as specified in the Agency' s and/or the DLR'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

In view of the above definition and of the objectives of the activity covered by this Subcontract it is explicitly agreed that the Subcontractor will not use Background Intellectual Property to achieve such objectives.

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 the DLR, and/or ensure that the Agency and the DLR be granted, all the necessary rights in this respect.

### 6.4 The free licences provided for the benefit of ESA and DLR

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 and DLR shall be deemed granted through signature of the present Subcontract and without the need to implement a separate licence.

### 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 Prime Contractor items and ESA Fixed Assets under Construction (reference is made to Article 3.1 above) that are subject of 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. if any, Customer Furnished Items and/or Items made available by the Agency (see Article 5.4 of the Subcontract).

The Subcontractor shall operate an inventory control system of all 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 Prime Contractor and the Agency 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 shall take decisions regarding the final destination and final ownership of each item listed in the Record. The Agency shall be free to choose amongst the following options with respect to final destination and final owner of each such item:

- a) the right to claim delivery to the Agency and transfer of ownership (the latter if applicable) - with issue of appropriate instructions concerning packing and shipment (at the Subcontractor's expense),
- 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 through the Prime Contractor (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 Asset to the Prime Contractor and complete the transfer or disposal forms to be provided by 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 a disposition of all items has been given by the Agency and recorded in the documentation.

Signed electronically by the Parties to this Subcontract,

In: Cologne

On: 13.04.2021

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

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

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

In: Prague

On: 15/04/2021

For: Institute of Atmospheric Physics of the Czech Academy of Sciences

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## **ANNEX: PERSONAL DATA “CONTROLLER TO CONTROLLER” (THE “PDCC”) OF THE EUROPEAN SPACE AGENCY (“ESA” OR THE “AGENCY”)**

The Subcontractor understands that this **Personal Data “Controller to Controller” 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 document also apply to him as “sub-contractor” according to the following Section 9 and 10 stating the “flow down principle” in the respective subcontracts.

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:

[REDACTED]

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:

[REDACTED]

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 Regulation (EU) nr. 2016/679).

(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 Regulation (EU) nr. 2016/679).

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:

[REDACTED]

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.

## 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.
- 4.4 The Party having received the other Party's Personal Data under the Contract shall Process such Personal Data only in the Agreed Territory of Processing.

## 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 unauthorised 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 authorised 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 unauthorised 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 Sub-contractors or sub-processors) such Personal Data only in the Agreed Territory of Processing. No transfer of Personal Data outside the Agreed Territory is allowed without prior written approval of the other Party.

## 10. Sub-contractors

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

- a) sub-contracting is specifically authorised by Contract and the Sub-contractors 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 Sub-contractors 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.

**APPENDIX 1: STATEMENT OF WORK**

## **APPENDIX 2: INVENTORY / FIXED ASSET RECORDS**

### 1.1. Content of Electronic Inventory/Fixed Asset Record

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

For all items:

- contract number / Sub-contract number if applicable
- 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 Contract, 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 Contractor after its acceptance by ESA (using the template that will be provided by the Agency upon announcement by the Contractor 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 Contractor)

## 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:

<b>Source / Purpose</b>	<b>Supplier-acquired Items</b>	<b>Customer - furnished Items</b>
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 Contract.

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 Contract, 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 year and are identified as individual items in the Supplier and his lower tier suppliers list of Agency's assets.

### **APPENDIX 3: CONTRACT CHANGE NOTICE**

For submission of a change, the Contractor shall submit his 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 Contractor's name and the 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 (Contractor or ESA)
- The description of the change (including Work Package Descriptions, WBS, etc.)
- The reason for the change
- The price breakdown in €, 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 Contractor's representatives

The 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.

	DIRECTORATE:	Contractor:	
		Contract No.:	
CONTRACT CHANGE NOTICE No.	ISSUE:	DATE:	PAGE:
	DOC. No.:		
TITLE OF AREA AFFECTED (WORK PACKAGE ETC):		WP REF:	
RECOMMENDED CLASS (A or B):		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:	