

SUBCONTRACT

Reference 68719/54.61/SWESNET-19-IAPPrague

Between **Royal Belgian Institute for Space Aeronomy**, whose registered office is at Ringlaan 3, 1180 Brussels, with VAT nr. BE 0349.010.750, represented by Prof. Dr. Martine De Mazière, its General Director a.i.

(hereinafter referred to as “BIRA-IASB” or the “Prime Contractor”)

And **Institute Of Atmospheric Physics CAS**, whose registered/main office is at Bocni II n. 1401; Prague 4, represented by Radan Huth, its Director,

(hereinafter referred to as IAP Prague or the “Subcontractor”),

Hereinafter collectively referred to as "the Parties" or individually referred to as "a Party".

PREAMBLE

Whereas

- The European Space Agency (hereinafter referred to as the “Agency” or “ESA”) issued an Invitation to Tender, AO/1-10363/20/D/MRP (the “ITT”) and invited Tenderers to submit a proposal for the “S2P - S1-SW-02.2, S1-SW-05, S1-SW-06 - Space Weather Service Network Development and Pre-Operation Part 1”.
- In response to such ITT, BIRA-IASB has submitted a proposal reference 68385/54.61/SWESNET-BUSOC-PRO, dated 06.10.2020 (the “Proposal”).
- The Agency has performed the evaluation of the Proposal and awarded after negotiation the “S2P- S1-SW-02.2, S1-SW-05, S1-SW-06 — Space Weather Service Network Development And Pre-Operation Part 1” Contract (the “Contract”) under the reference 4000134036/21/D/MRP covering the full scope of the activity to BIRA-IASB.
- In anticipation of this Contract, for the sake of safeguarding the schedule requirements of the pre-operational Services covered by the Contract, the Agency has granted BIRA-IASB a Preliminary Authorisation to Proceed (PATP) taking effect from 11th February 2021. Accordingly, BIRA-IASB has released a PATP (ref. 68552/54.61/PATP-19-IAPPRAGUE) to IAP Prague to continue its pre-operational services.
- IAP Prague is mentioned in the Proposal and will be acting as Subcontractor of the Prime Contractor BIRA-IASB under the Contract.

The Parties hereto, in consideration of the above, agree to the following:

ARTICLE 1 – Subject of the Subcontract and Applicable Documents

- 1.1 Each Party acknowledges having read and agrees to comply with the terms and conditions of the Invitation to Tender AO/1-10363/20/D/MRP, including the Appendices and within the limits of the non-compliances accepted by the Agency, and will duly perform the tasks assigned to it as set out in the Statement of Work, including its Annexes (hereinafter referred to as the “Work”).
- 1.2 The Work shall be performed in accordance with the following documents, which constitute an integral part hereof and are listed in order of precedence, in case of conflict:
 - a) The Articles of this Subcontract

- b) Appendix H: The Complements and Amendments of the Contract in its Article 5 to the Part II of the General Clauses and Conditions (hereinafter referred to as "GCC") related to the conditions concerning intellectual property rights for ESA study, research and development contracts
- c) Appendix I: The Personal Data Processing Annex of the Agency (the "PDP"), the Confidentiality Undertaking of the Agency (Appendix 6 of the Contract), the Category B Work Results (Appendix 7 of the Contract), and the list of Background Intellectual Rights (Appendix 8 of the Contract), all not attached hereto but known to both Parties
- d) Appendix A: The Payment Plan and Advance Payments
- e) Appendix B: The GCC for ESA Contracts, reference ESA/REG/002, rev. 3, not attached hereto but known to both Parties, as amended by the Contract, and applied mutatis mutandis
- f) Appendix D: The Milestones and Deliverables Schedule
- g) Appendix C: The Statement of Work, reference ESA-S2P-SWE-SOW-0003, issue 1, revision 0, dated 01.07.2020 (Appendix 2 of the Contract) and the applicable Service Level Agreement (hereinafter referred to as "SLA"), reference ESA-S2P-SWE-SLA-0001, dated 12.02.2021, both not attached hereto but known to both Parties
- h) Appendix E: The response to the Agency's clarification requests provided by the Subcontractor during the negotiation with the Agency
- i) Appendix F: The Prime Contractor's Proposal updated on 31.03.2021 and composed of
 - the Technical Proposal (BUSOC-SWESNET-PRO-AO10363-TP_i1r2)
 - the Management and Administration Proposal (BUSOC-SWESNET-PRO-AO10363-MAP_i1r2)
 - the Implementation Proposal (BUSOC-SWESNET-PRO-AO10363-IMP_i1r2)
 - the Contractual Proposal (BUSOC-SWESNET-PRO-AO10363-CP_i1r4)
 - the Development and Implementation Plan (ESA-S2P-SWE-DIP-0002_i0r5_draft)
 - the Familiarization Plan (BUSOC-SWESNET-PRO-AO10363-FAP_i1r1)

all not attached hereto but known to both Parties
- j) Appendix G: The Subcontractor's Proposal dated 05.10.2020 and duly signed by [REDACTED] and [REDACTED], including the Subcontractor's Price Breakdown (PSS sheets) last updated on 06.10.2020, not attached hereto but known to both Parties
- k) Appendix J: The Inventory/Fixed Asset Record (Appendix 4 of the Contract), the Agency's Standard Requirements for Management, Reporting, Meetings and Deliverables (Appendix 3 of the Contract), and the Contract Change Notice Template (Appendix 5 of the Contract), all not attached hereto but known to both Parties

For the avoidance of doubt, reference herein to a document shall be deemed to constitute a reference to such document including its specific applicable documents and its appendices/annexes.

- 1.3 The Subcontractor shall perform the Work in accordance with the terms of this Subcontract, as further defined in the documents listed in Article 1.2, and including:
- the tasks described in the Work Packages WP-23191, WP-38190, WP-52193;
 - the delivery of associated software, services and documentation;
 - the provision of the associated Space Weather Products; and,
 - the related reporting.

The Subcontractor shall further provide the Work in a timely and professional manner, in conformance with that level of care and skill ordinarily exercised by other professionals in similar circumstances, and in compliance with all applicable laws, regulations, and professional codes.

ARTICLE 2 – Management Provisions

- 2.1 The Subcontractor shall provide the necessary professionally qualified personnel, material, equipment, services and facilities, except those specifically mentioned in Article 6, Clause 11 as being undertakings of the Agency, to perform the Work.
- 2.2 Any insurance which may be taken by the Subcontractor to cover its liabilities hereunder shall include a provision of non-recourse against BIRA-IASB or the Agency and its insurers, in accordance with Sub-Clause 18.1.3 of the GCC. The Subcontractor shall indemnify BIRA-IASB or the Agency and hold BIRA-IASB or the Agency harmless against all consequences derived from its failure to include such a provision, in accordance with Sub-Clause 18.1.6 of the GCC.
- 2.3 The Subcontractor shall afford to the Prime Contractor and the Agency full visibility into the performance of its tasks and the management of his Subcontractors, if any. This shall include access to all documentation associated with the execution of the Work under the conditions set forth under Part II of the GCC as modified by this Subcontract.
- 2.4 The Subcontractor shall demonstrate to the Prime Contractor and the Agency that the requirements are met and the manner in which they are met. The Subcontractor shall not conclude waivers or deviations which potentially impact compliance with the Work without first obtaining the approval of the Prime Contractor.
- 2.5 The Subcontractor shall accept that the Agency and/or the Prime Contractor at their discretion may participate in all formal progress meetings and reviews at all levels of contracting. To that end, the Subcontractor shall timely invite representatives of BIRA-IASB and the Agency through BIRA-IASB to any formal meetings and reviews connected to the Work.
- 2.6 The Subcontractor shall anticipate the risks associated with the implementation of the tasks, their planning and costs, and define and implement mitigation actions to minimise risk materialisation.
- 2.7 The Prime Contractor shall ensure the timely co-ordination of any and all activities with the Agency.
- 2.8 In addition to the baseline activities, the Subcontractor shall provide such technical support as may be required by the Prime Contractor on terms no more onerous than those on which similar work is undertaken under the terms of the present Subcontract, except escalation to cover a price inflation, to be agreed between the Parties following the procedure foreseen in Article 7.
- 2.9 In order to meet the challenges of the project, a Steering Committee is constituted with the objectives to:
 - Provide support and guidance to the project manager;
 - Warrant the overall project functional, technical and financial objectives, the project coherence, and the adequacy of project decisions with the overall project objectives;
 - Help manage and mitigate the risks when problems arise that could jeopardize the overall project achievement;
 - Respond, in a coordinated manner, to any questioning of a manager partner of the Consortium, in order to resolve a situation requiring escalation at a higher level.

The Steering Committee will not interfere with the project functional and hierarchical communication lines with the Agency. It is composed of the following authorized members:

- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

2.10 No previous and/or parallel contracts shall entail any liability or implicit obligation whatsoever for the Prime Contractor and/or the Agency with respect to their output or impact on the performance of the present Subcontract or parts thereof.

ARTICLE 3 – Delivery

- 3.1 The Work delivery shall be carried out in accordance with the requirements of Appendix C and shall be made available as necessary to meet the schedule of Appendix A.
- 3.2 The Contract Closure Documentation (Appendix J; Appendix 3 of the Contract, Annex A) shall be delivered in one set of documentation each, to BIRA-IASB authorised representatives not later than the time of submitting the invoices for the Final Settlement.
- 3.3 The duration of the Subcontract shall be of 29 months as follows:
- the Development activities of 24.5 months starting from the signature of the Contract by the Agency;
 - the Pre-Operational activities of 24.5 months starting on the 11th February 2021.
- 3.4 The Service Phase for the provision of the Work Pre-Operational Services (Task 2) extends from 11th February 2021 until 28th February 2023, including a phase-out from 1st January 2023 until 28th February 2023.

ARTICLE 4 – Price and Payment

- 4.1 The price type of this Subcontract is Firm Fixed Price (FFP) as defined in Section 2.1 of Annex II to the General Clauses and conditions for ESA Contracts.
- 4.2 The price of this Subcontract amounts to:
36500 EUR
(Thirty Six Thousand Five Hundred EURO)
broken down as follow:
- a) 20119 EUR FFP amount for the Development activities of the Work by IAP Prague;
 - b) 16381 EUR FFP amount for the Pre-Operational services of the Work by IAP Prague;
- 4.3 The above amount does not include any taxes or duties in the Member States of the Agency.
- 4.4 The price is deemed to include all applicable fees for licences to be purchased and delivered in the frame of the Subcontract. The price is further deemed to include any and all licence fees payable according to Clause 43.7 of the GCC.
- 4.5 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS® 2020, to the addressee(s) specified in Article 6, Clause 5, Sub-Clause 5.1 a) of the Subcontract. Reference to INCOTERMS® in this provision is exclusively for the purpose of price definition.
- 4.6 A change in the price, or in the apportionment of the price as set forth in Appendix A hereto, can only be made in accordance with the change procedure defined in Article 7.

- 4.7 The Prime Contractor shall make the following payments under the Subcontract as described in Appendix A (the Payment Plan and Advance Payments).
- 4.8 Payment shall be made within thirty (30) calendar days after the Prime Contractor has received the corresponding payment by the Agency and upon fulfilment of the following requirements:
- upon successful completion and acceptance by the Agency of the milestone described in Appendix A;
 - receipt by the Prime Contractor of a correct invoice from the Subcontractor.
- 4.9 All invoices shall be submitted to the Prime Contractor in electronic form via swesnet.invoice-ae@aeronomie.be, with the following prefix in the email subject: "SWESNET/19-IAPPrague".
Each invoice shall contain the following information:
- To: Royal Belgian Institute for Space Aeronomy
(Attn. Accounting department),
Ringlaan 3, 1180 Brussels, Belgium
- Subcontractor's name and address
 - Subcontractor's bank account details including IBAN & Swift Code
 - Subcontractor VAT number if applicable
 - Prime Contractor VAT number: BE 034901075
 - Identification number of the Contract: ESA Contract No. 4000134036/21/D/MRP
 - Identification of the required payment (milestone description and amount)
- 4.10 Appendix A to this Subcontract, with the Payment Plan, completed by the Appendix D as an indication of the invoicing schedule, is subject to the above requirements.
- 4.11 Advance payments constitute a debt of the Subcontractor to the Prime Contractor until it has been set-off against subsequent milestones as shown in Appendix A hereto.
- 4.12 Should the Subcontractor or a Subcontractor's subcontractor encounter serious difficulties in the payment process leading to:
- (i) timely payment of due invoices (i.e. related to a milestone already achieved) to be made by the Subcontractor's direct customer (i.e. not ESA),
 - (ii) contractual coverage of activities already kicked-off,
- the said Subcontractor may directly contact the Agency at: [REDACTED]
- Any Subcontractor contacting the Agency through the above email shall document the steps already taken towards its direct customer in the Consortium in order to resolve the issue and shall document that the Prime Contractor has been informed of the issue.
- In doing so, such Subcontractor shall attach the Standard Contact Form available at: <http://emits.sso.esa.int/emits-doc/ESTEC/Indirect-Payments-Query-Form.docx> properly filled in or provide the same information in the body of the email.
- It is explicitly understood that the communication channel described above shall not replace the normal communication lines within the Consortium.

ARTICLE 5 – Management and Control of Inventory Items / Fixed assets

The following provisions apply to any items other than those items which fall within the scope of Article 3 of the Subcontract.

- 5.1 The Subcontractor shall specify, record, manage and control any and all Customer items and ESA Fixed Assets under Construction 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 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 (see Article 6, Clause 11 of the Subcontract) and/or Items made available by the Agency (see Article 6, Clause 11 of the Subcontract).

5.2 The Subcontractor shall contribute to the “**Inventory Control System**” operated by BIRA-IASB of all above mentioned items and shall mark them as falling under this Article of the Subcontract.

The Subcontractor shall, as part of the Inventory Control System, support BIRA-IASB in the maintenance of an Inventory/Fixed Asset Record (in an electronic tool of his choice) which shall, as a minimum, contain the information as shown in Appendix J (Appendix 4 of the Contract).

5.3 The Inventory/Fixed Asset Record shall be kept updated by the Subcontractor. It shall be made available to the Agency upon request but as a minimum yearly during the execution of the Subcontract. A final record shall be submitted with the final contractual deliverables as foreseen in Appendix J (Appendix 3 to the Contract).

If the Inventory/Fixed Asset Record also includes any of those items which fall within the scope of Article 3 of the Subcontract, these items are to be clearly set apart.

Items, for which no place of delivery has been identified in Article 3 of this Subcontract, are subject to the following provisions.

Upon completion of the Work, 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;
- 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 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; and
- 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 Agency and complete the transfer or disposal forms to be provided by the Agency upon request by the Subcontractor through BIRA-IASB. The information to be given by the Subcontractor in the forms shall be agreed with the Agency through BIRA-IASB.

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 Appendix C (Annex A to Appendix 2 of the Contract). 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.

- 5.4 The following Fixed Assets remain in the custody of the Consortium after the Agency's acceptance of respective asset:
- Space Weather Service Network
- 5.5 The Subcontractor shall support BIRA-IASB in the labelling and physical inspections of the ESA Fixed Assets that are placed or remain under its custody. A physical inspection of each ESA Fixed Assets shall be performed as a minimum once every two years, in accordance with the inspection plan submitted by the Prime Contractor and agreed with ESA.
- 5.6 During the physical inspection, the Subcontractor shall complete a Physical Inspection Report and transmit it through BIRA-IASB to the Agency's representative at the following address:

[REDACTED]

ARTICLE 6 – Complements and Amendments to the GCC

The General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002., rev. 3 apply to this Subcontract with the following complements and amendments. The specific conditions in this Subcontract shall prevail over the GCC.

Unless differently explicitly stated in the present Article, although the text of the General Conditions refers to the roles and the responsibilities between the Agency and the Contractor, in the scope of the present Subcontract the "Agency" shall be replaced by references to "the Prime Contractor" (BIRA-IASB), except in Clause 6, 8.3, 8.4, 24, 27.4, 29, Part II and Annex I, Section 2 and Section 10, where "Agency" means "the European Space Agency".

The contractual entities in the execution of the present Subcontract are only BIRA-IASB (the Prime Contractor) and IAP Prague (the Subcontractor), while the Agency (the European Space Agency) shall operate only by means of BIRA-IASB.

PART I: CONDITIONS APPLICABLE TO ESA CONTRACTS

CLAUSE 2: APPROVAL AND ENTRY INTO FORCE

For the purpose of this Subcontract the authorised representative of BIRA-IASB is [REDACTED] at interim.

This Subcontract subsumes the previous Authorisation to Proceed. All commitments and payments made under the Authorisation to Proceed are deemed to have been committed and paid under the Subcontract.

CLAUSE 4: ORIGINALS OF THE CONTRACTS

The following provision is added to Clause 4 of the GCC:

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.

CLAUSE 5: THE PARTIES' REPRESENTATIVES

Sub-Clause 5.1: The Prime Contractor's Representatives

The BIRA-IASB's representatives are:

- a) [REDACTED] for management and technical matters or a person duly authorised by her ("Project Manager").

All correspondence for management and technical matters will be addressed as follows:

	To:	With copy to:
Name	[REDACTED]	[REDACTED]
Telephone No.	[REDACTED]	[REDACTED]
e-mail address	[REDACTED]	[REDACTED]
Mail Address	[REDACTED]	[REDACTED]

- b) Mr Michael Middernacht 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 No.	[REDACTED]	[REDACTED]
e-mail address	[REDACTED]	[REDACTED]
Mail Address	[REDACTED]	[REDACTED]

- c) Personal Data Protection matters shall be addressed to the Data Protection Officer at the following email address:

[REDACTED]

Sub-Clause 5.2: The Subcontractor’s Representatives

The IAP Prague’s representatives are:

- a) [REDACTED] for management and technical matters related to the Work by IAP Prague.

All correspondence for management and technical matters will be addressed as follows:

	To:	With copy to:
Name	[REDACTED]	/
Telephone No.	[REDACTED]	
e-mail address	[REDACTED]	
Mail Address	[REDACTED]	

- b) [REDACTED] for contractual and administrative matters or a person duly authorised by him/her (“Contracts Officer”).

All correspondence for contractual and administrative matters will be addressed as follows:

	To:	With copy to:
Name	██████████	/
Telephone No.		
e-mail address	██████████	
Mail Address	████████████████████ ████████████████████	

c) Personal Data Protection matters shall be addressed to the Data Protection Officer at the following email address(es):

██████████

CLAUSE 9: KEY PERSONNEL

The Subcontractor's key personnel are listed in the Subcontractor's proposal referred to in Article 1.2 above.

CLAUSE 10: SUB-CONTRACTS

The Subcontractor has no subcontract.

CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)

The Agency through BIRA-IASB, and BIRA-IASB undertake to provide CFI(s) to the Subcontractor in accordance with the CFI listed in Appendix C. For the purpose of Clause 11 of the GCC the value of the items is nil (0€).

The Subcontractor shall use the CFIs and access and any information provided in connection therewith exclusively for the sole purpose of the Work. At the end of this Subcontract, the subcontractor shall immediately thereafter return all related information in whatever form to the Agency through BIRA-IASB Project Manager. After the execution of the Subcontract, the access to CFIs will be terminated.

Failure of the Agency or BIRA-IASB to execute its undertakings under Clause 11 shall not relieve the Subcontractor from fulfilling his own obligations.

CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY

The items and documents made available are listed in the specific section of Appendix C. For the purpose of Clause 12 of the GCC the value of the item is nil (0€).

The Subcontractor shall use the IMAs and access and any information provided in connection therewith exclusively for the sole purpose of the Work. This access right ends automatically at the end of this Subcontract and the subcontractor shall immediately thereafter return all related information in whatever form to the Agency through BIRA-IASB's Project Manager. The Subcontractor shall neither distribute nor disclose any such information to any third party.

CLAUSE 13: CHANGES

Clause 13 is complemented by the provisions of Article 7.

CLAUSE 14: TIME-LIMITS FOR THE PROVISION OF DELIVERABLES AND SERVICES

The time limits for the provision of deliverables in Clause 14.1 are specified in Article 3 of this Subcontract.

Sub-Clause 14.2 shall be implemented/amended as follows:

The Subcontractor shall, without delay and in any case at the latest within one week of its coming to his notice or of the time when the Subcontractor should have reasonably come into notice, had the Contractor used its best diligence in the Subcontract's performance, notify and consult with BIRA-IASB of any occurrence likely to affect the satisfactory performance of the Subcontract and in particular of the agreed schedule. At the same time, the Subcontractor shall analyse the impact of any such occurrence and propose corrective action(s), to be agreed with BIRA-IASB before implementation. If within a period of two weeks, the Subcontractor has not complied with the above, the Subcontractor shall be precluded from making any claim resulting from such occurrence.

The following provision is added to Clause 14.3 of the GCC:

Either Party may implement Clause 14.3 of the GCC 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.

CLAUSE 15: HANDLING, PACKING AND TRANSPORT, TRANSFER OF OWNERSHIP AND RISK

The following provision is added as Sub-Clause 15.3.6 of the GCC:

- 15.3.6 Should in the execution of the Subcontract a need arises to provide the Prime Contractor and the Agency with information which is subject to export control laws and regulations, the Subcontractor shall secure that such information is only passed on to the Prime contractor and the Agency in accordance with the provisions of such export control laws and regulations.

CLAUSE 16: ACCEPTANCE AND REJECTION

16.1 Acceptance of Pre-Operational Service

- 16.1.1 The quality and availability of the Subcontractor's pre-operational service provision shall be assessed on a monthly and annual basis. Acceptance or rejection will be based on the following criteria:

- quality and completeness of the pre-operational service provision provided in accordance with the Performance Metrics as mentioned in the SLA.

The Agency's assessment of the quality of the pre-operational service provision shall be reported to the Prime Contractor through the Agency's comments on the monthly report. The Agency's Technical Officer shall indicate by signature of the monthly report the Agency's acceptance of the Services rendered. The Agency shall accept or reject the pre-operational services provision within 10 working days from receipt of the report. Failing a notification from the Agency within this 10 working day period, then the Services will be deemed as accepted for the reporting period concerned.

The Prime Contractor will not be liable to pay for pre-operational services provision rejected by the Agency and the Subcontractor shall adjust its invoice accordingly to reflect the percentage of cost to be deducted in relation to the percentage of pre-operational service provision not accepted.

- 16.1.2 The Prime Contractor shall immediately notify the Subcontractor in writing of any deficiencies in the pre-operational service provision and as soon as these come to its notice. The Subcontractor shall initiate the necessary corrective action(s) within 1 (one)

working day in order to allow the correct and timely provision of the affected element(s) of the pre-operational services.

- 16.1.3 The acceptance criteria for any additional new or substantially updated products which may be added to the pre-operational service provision part of this contract shall be indicated in the relevant CCN authorising the work.

16.2 Acceptance of Deliverables

16.1.2 Documentation and Reports

As regards Documentation and reports, should the Agency's Technical Officer not accept the deliverables from the Subcontractor, the Technical Officer shall so inform the Subcontractor through BIRA-IASB with the relevant justification. If no decision has been notified to the Subcontractor within one month and one week of receipt by the Agency of the deliverables, such shall be considered as having been accepted.

All technical documentation, with the exception of the monthly report mentioned under paragraph 16.1.1 above, supplied as a deliverable under this Subcontract shall be subject to formal review by the Agency. For any submission for acceptance of technical documents, the Agency has one month to reject the documentation in whole or in part. If no decision has been notified to the Subcontractor by the Prime Contractor within one month and one week of receipt by the Agency, then the documentation shall be considered as having been accepted.

Should the Agency's Technical Officer not accept the deliverable technical documentation, the Technical Officer shall inform the Prime Contractor and notify the reasons for rejection in writing. Rejected documentation must be rendered, at the Subcontractor's expense, compliant to the specified requirements and resubmitted within a reasonable time range fixed in writing by the Agency.

Updates of already delivered and accepted documents shall be subject to the same acceptance provisions defined above.

16.2.2 Acceptance of Software

The objective of the acceptance testing is to establish whether the deliverable items are complete and meet the performance, reliability and availability requirements as stated in Appendix C.

On satisfactory completion of the acceptance test, the Agency's responsible Technical Officer shall issue a Certificate of Acceptance through BIRA-IASB.

Rejected items must be rendered compliant to Appendix C, at the Subcontractor's expense, and represented for final acceptance within the time scale fixed in writing by the Agency.

16.3 General provisions applicable to the acceptance of Documentation, reports and software

16.3.1 Cost incurred in connection with Acceptance Procedures

The Subcontractor shall fix all errors and non-compliances during the period of acceptance. The related costs incurred during this period shall be borne by the Subcontractor.

16.3.2 Assistance by other Contractors in the Acceptance Process

The Agency reserves the right to use the services of another contractor or contractors to assist it in the acceptance process. Such contractor(s) shall be entitled to access all applicable information, data and tests performed on any deliverable item as well as the Contractor's premises.

- 16.3.3 The above shall not affect the rights of the Agency resulting from Clause 32.

16.3.4 Scope of Acceptance

The scope of any acceptance under this Subcontract shall be limited to the technical aspects of the deliverables and services. Compliance with legal and contractual aspects, including in particular those described in this Subcontract, shall not be subject of any acceptance so that acceptance shall not affect the Subcontractor's obligations in this regard.

16.3.5 The places of acceptance shall be as specified in Appendix C.

CLAUSE 17: PENALTIES/INCENTIVES

Clauses 17.1 to 17.3 of the GCC shall apply to this Contract with the following amendments:

17.2 Pre-Operational Service

17.2.1 Notwithstanding the provisions of Clause 16 above concerning non-payment of rejected pre-operational service provision, penalties shall apply in the event that the minimum Service levels agreed between the parties in the Agency's Statement of Work are not met i.e. the Subcontractor is underperforming. The level and value of penalties as well as the associated check-points are laid out in the SLA.

CLAUSE 21 AND 22: SCOPE OF WARRANTY AND WARRANTY PERIOD

Clause 21 and 22 shall not be applicable.

CLAUSE 27: PRICING

Sub-Clauses 27.3 and 27.4 do not apply, unless in case of termination as per Clause 30 of the GCC.

CLAUSE 34: APPLICABLE LAW

The substantive law referred to in Clause 34 of the GCC is the law of Belgium. The scope of its applicability is as laid down in the said Clause of the GCC.

CLAUSE 35: DISPUTE RESOLUTION

The arbitration proceedings referred to in Clause 35 of the GCC shall take place in Brussels, Belgium.

PART II: CONDITIONS CONCERNING INTELLECTUAL PROPERTY RIGHTS FOR ESA STUDY, RESEARCH AND DEVELOPMENT CONTRACTS

The specific complements and amendments of the GCC Part II that prevail for this Subcontract are described in Appendix H.

ARTICLE 7 – Changes

Clause 13 is complemented as follows:

7.1 General

The following provisions are added to Sub-clause 13.1 (Classification of changes):

Class A Changes are changes initiated by BIRA-IASB in the documents of the contractual baseline as defined in Article 1.

No change to the contractual baseline, as defined in Article 1, and no change which establishes or may establish a financial or other obligation to BIRA-IASB, shall be

introduced, implemented, or approved by the Subcontractor, on any level of contracting, without the written consent of the BIRA-IASB Representatives listed in Article 6, sub-clause 5.1.

7.2 Consequences of the changes on the subcontract's terms

All changes, depending upon their nature, shall be classified into the categories defined below.

The baseline from which deviations are deemed to be changes shall be the Contractual Baseline in its latest contractual update, that is as agreed and approved by BIRA-IASB at the date of approval of the change.

Class A Changes

If any Class A change causes an increase or decrease in the cost of, or the time required for the performance of the subcontract, an appropriate adjustment shall be made in the price, or the schedule, or both.

Each proposed modification shall be priced and submitted in the same detail and on the same basis as the original subject matter of the subcontract (e.g. hourly rates, overheads, profit margins, price type, PSS forms, modified payment plans, etc.) unless otherwise specifically agreed.

In the event of cancellation of any work or hardware or software (negative Class A), BIRA-IASB reserves the right to audit the relevant costs, in accordance with Annex I to the GCC (*Determination of prices and cost control*).

Notwithstanding the above, the Subcontractor shall be ready to offer maximum flexibility in the execution of its work with respect to changes to requirements of Appendix C. In addition, the Subcontractor shall provide, as part of his baseline activities under the subcontract, any support requested by BIRA-IASB or the Agency to analyse possible changes.

Class B Changes

The Subcontractor shall be responsible for all Class B changes and these shall not change the conditions of the Subcontract. In particular, the cost and schedule impacts of changes deriving from changes necessary to make the subjects of sub-contracts conform to their technical specifications shall not be borne by BIRA-IASB nor the Agency.

7.3 Limitation of liability for changes

- i) The Subcontractor shall reduce to the minimum any delay to the programme caused by any changes. If a delay due to a Class A change causes extra costs, BIRA-IASB shall pay such costs only insofar as this delay really occurred and the Subcontractor can prove that this change was the particular cause of the delay. Contractual dates shall be modified only if the Subcontractor can prove that the Class A change is the particular cause of his requesting a delay.
- ii) The conditions governing a change shall be those contained in the Subcontractor's Change Notice as approved by BIRA-IASB; any documentation related to a change supplied by a Subcontractor's subcontractor shall be considered as supporting information only and shall have no contractual implication whatsoever.
- iii) BIRA-IASB nor the Agency shall not bear the cost of implementing changes deriving from any work which the Subcontractor and/or Subcontractor's subcontractors may be performing under another contract with the Agency or a Third Party.
- iv) All tasks and activities relating to the contractual change procedure mainly consisting of, but not limited to:

- establishment of the changed proposal data package;
- negotiation and implementation of the change;
- updating or refocusing of contractual documentation (configuration management), etc.;
- administrative effort associated with the updating of technical and other baseline documentation;
- implementation of industrial policy directions;

shall form part of the Subcontractor's system routine activities covered by the Subcontract price and cannot be charged in addition to the baseline activities, unless the subcontractor can demonstrate that, in case of an BIRA-IASB requested Class "A" change, the associated effort and cost are of such magnitude that they are tantamount to new procurement.

- v) Nothing contained in this Article or nothing contradictory in Appendix C is to be construed as justifying any decision by the Subcontractor not to introduce or to suspend the introduction of a change approved or ordered by BIRA-IASB or the Agency.

7.4 Change Review Board

A Change Review Board (CRB) shall be set up, upon request of either Party and/or the Agency, consisting of the Agency, the Prime Contractor and the Subcontractor's Representatives designated in Article 5, Clause 5. The function of the Board shall be to review and decide upon all Contract Change Notices (CCNs) submitted to it. The members of the CRB may be assisted by specialists of their own staff or the staff of their Subcontractors.

The Subcontractor shall make available to the Prime Contractor all data required by the Prime Contractor to permit a complete evaluation of the implications of any proposed change.

When examining CCNs, the CRB shall either reach unanimous agreement or draw up a statement of disagreement.

If a statement of disagreement is recorded, either Party may submit the disagreement to the Steering Committee (see Article 2.9) or eventually to the arbitration procedure, as provided for in Clause 35.1 and 35.2 of the ESA GCC respectively.

7.5 Consequences of the approval of changes

Approval by the CRB of a CCN constitutes:

- A confirmation of BIRA-IASB's decision to introduce the change.
- An agreement on the classification of the change, its costs and the consequences of the change on the schedule and the other provisions of the Subcontract.

Signature of the CCN by the Representatives of parties (designated in Article 6 above), who are the only persons authorised to do so, shall render the change enforceable and the contract terms shall be deemed to be modified accordingly.

ARTICLE 8 – Access to work in progress

- 8.1 BIRA-IASB and the Agency through BIRA-IASB may assess the technical performance under this Subcontract, and for this purpose all work under this Subcontract are subject to continuous examination, evaluation and inspection by BIRA-IASB and/or the Agency during the period of this Subcontract. The Subcontractor shall, for the purpose of this Article, arrange access for the representatives of BIRA-IASB and the Agency to those premises where work on or in connection with the subject of this Subcontract is being, has been or is intended to be performed.

Above responsibilities may be executed by representatives from BIRA-IASB and/or the Agency, as will be notified to the Subcontractor.

- 8.2 BIRA-IASB and the Agency through BIRA-IASB may call for the suspension of any work they may judge unsatisfactory as failing to comply either with the terms of the Subcontract or with the normal customs of the trade. The exercise of this right shall in no way and shall in no circumstances affect BIRA-IASB's rights, or lessen the Subcontractor's responsibilities regarding the due fulfilment of his obligations.
- 8.3 Except in case of extreme urgency, BIRA-IASB shall inform the Subcontractor in good time of any intended visit to a Subcontractor's subcontractor and shall invite a representative or representatives of the Subcontractor to be present.
- 8.4 The Subcontractor shall not permit work under this Subcontract to be performed in association with or in proximity to work subject to national security or similar restrictions such that access to the area in question by the Agency's representatives could be prevented for reasons of security restrictions.

ARTICLE 9 – Additional special conditions

- 9.1 Continuing Rights and Obligations under the Subcontract

Completion or termination of the present Subcontract shall not affect the Parties' continuing rights and obligations regarding any relevant provisions of this Subcontract, in particular, but not limited to, those relating to Article 6 Clauses 6, 11, 12, 17 and 35, as well as Chapters IV, V, VI and IX and PART II of the GCC as modified by this Subcontract and Article 5 (Management and Control of Inventory Items/ Fixed Assets under the Contract), and 9 (Additional Special Conditions) and Appendix I (the Personal Data Processing Annex of the Agency and the Confidentiality Undertaking).

- 9.2 Right to visit

When the Agency is exercising its right to visit the Contractor or Subcontractor's premises, the Agency will comply with the security requirements and provide reasonable notice.

- 9.3 Proprietary Information

When the Agency is accessing information not part of the Work Result for the sole purpose of technical or legal inspection, the Agency will treat it as Proprietary Information, if requested by the information owner.

- 9.5 Special provisions.

Should any part or provision of this Subcontract be determined to be prohibited, or rendered void or unenforceable, by any legislation or other cause, the void or unenforceable provision shall be deemed replaced by a valid and enforceable provision, which achieves as far as legally possible the objectives the Parties intended to achieve with the void or enforceable provision. The remaining terms and conditions of the Subcontract shall be interpreted in an equitable manner in order to maintain the balance of the Parties' respective obligations. The validity and enforceability of the Subcontract as a whole shall not be affected.

The waiver by either party hereto of its rights under this Subcontract in respect of any breach, default or omission by the other in the performance or observance of any term or provision of this Subcontract, shall neither be deemed nor imply a waiver of its rights in respect of any other breach, default or omission by the other.

In witness whereof,
the Parties hereto have caused this Subcontract to be executed by their duly authorized signatories.

On: 16/07/2021

For: **BIRA-IASB**

On:

For: **IAP Prague**

Martine De Mazière
General Director a.i.

Radan Huth
Director

DALŠÍ STRANY NEJSOU URČENY KE ZVEŘEJNĚNÍ