

**Iguassu Subcontract No. P3-SST-III-SUB-003**

**with**

**North-Bohemian Observatory and Planetarium in Teplice**

**P3-SST-III**

**Robotic Telescopes Demonstration**

## SUBCONTRACT

Between:

**Iguassu Software Systems a.s.**  
(hereinafter called “the Contractor” or “Iguassu Software”),

whose Registered Office is at:  
Evropská 120,  
Dejvice,  
160 00 Praha 6,  
Czech Republic

represented by: Mr Petr Bareš, its Managing Director,

of the one part,

and:

**North-Bohemian Observatory and Planetarium in Teplice**  
(hereinafter called “the Subcontractor” or “Teplice Observatory”),

whose Registered Office is at:  
Koperníkova 3062,  
415 01 Teplice,  
Czech Republic

represented by: Mr Zdeněk Moravec, its director,

of the other part,

the following has been agreed:

## Table of Contents

ARTICLE 1 - SUBJECT OF THE CONTRACT – APPLICABLE DOCUMENTS .....	4
1.1. Subject of the Contract .....	4
1.2. Applicable Documents .....	4
ARTICLE 2 - DELIVERY .....	5
2.1. Place and Dates of Delivery .....	5
2.2. Meetings .....	5
ARTICLE 3 - PRICE & PAYMENT .....	6
3.1. Price .....	6
3.2. Payment .....	6
ARTICLE 4 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE SUBCONTRACT .....	8
ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC .....	8
CLAUSE 5: THE PARTIES' REPRESENTATIVES .....	8
CLAUSE 9: KEY PERSONNEL .....	10
CLAUSE 10: SUB-CONTRACTS .....	10
CLAUSE 13: CHANGES .....	11
CLAUSE 16: HANDLING, PACKING AND TRANSPORT, TRANSFER OF OWNERSHIP AND RISK 11	
CLAUSE 16: ACCEPTANCE AND REJECTION .....	12
CLAUSE 17: PENALTIES/INCENTIVES .....	13
CLAUSE 27: PRICING .....	13
CLAUSE 34: APPLICABLE LAW .....	13
CLAUSE 35: DISPUTE RESOLUTION .....	13
CLAUSE 36 – GENERAL, CLAUSE 39 – OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS, CLAUSE 42 – SOFTWARE (OPERATIONAL SOFTWARE) .....	14
ARTICLE 6 - ADDITIONAL SPECIAL CONDITIONS .....	23
<b>APPENDIX 1: PAYMENT PLAN AND ADVANCE PAYMENT(S) AND OTHER FINANCIAL CONDITIONS .....</b>	<b>25</b>
<b>APPENDIX 2: STATEMENT OF WORK .....</b>	<b>25</b>
<b>APPENDIX 3: STANDARD REQUIREMENTS FOR MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES .....</b>	<b>25</b>
<b>APPENDIX 4: INVENTORY/FIXED ASSET RECORD .....</b>	<b>26</b>
<b>APPENDIX 5: CONTRACT CHANGE NOTICE .....</b>	<b>28</b>
<b>APPENDIX 6: CONFIDENTIALITY UNDERTAKING .....</b>	<b>30</b>

## **ARTICLE 1 - SUBJECT OF THE CONTRACT – APPLICABLE DOCUMENTS**

### **1.1. Subject of the Contract**

The Subcontractor, as further described in the Statement of Work in Appendix 2, undertakes to collaborate in order to perform the P3-SST-III – Robotic Telescopes Demonstration, to deliver the software and documentation as described herein, and to make an oral presentation of the results. These activities shall be performed within the WPs as specified in the contractor’s proposal (applicable document f)).

### **1.2. Applicable Documents**

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

- a) The Articles of this Contract and its Appendix 1 (Payment Plan and Advance Payment(s) and other Financial Conditions), Appendix 4 (Inventory/Fixed Asset record), Appendix 5 (Contract Change Notice) and Appendix 6 (Confidentiality Undertaking);
- b) The General Clauses and Conditions for ESA Contracts (herein referred to as GCC), reference ESA/REG/002, rev. 2 not attached hereto but known to both Parties and available on <http://emits.sso.esa.int/emits/owa/emits.main>) “reference documentation” – “administrative documents”, as amended by this Contract;
- c) Appendix 2 hereto: The Statement of Work, reference ESA-SSA-SST-SOW-0005, issue 1, revision 0, dated December 2017;
- d) Appendix 3 hereto: The Standard Requirements for Management, Reporting, Meetings and Deliverables (rev 3: 2015-11) and its Annex A: Layout for Contract Closure Documentation (in its latest version);
- e) The Minutes of the negotiation meeting held on 16<sup>th</sup> April 2018, reference P3-SST-III-MoM-NEG, not attached hereto but known to both Parties;
- f) The Contractor’s Proposal reference ISS2017/AO9061/RT\_Demonstration, dated 28<sup>th</sup> February 2018, not attached hereto but known to both Parties.

## **ARTICLE 2 - DELIVERY**

### **2.1. Place and Dates of Delivery**

#### 2.1.1 Documents

The Subcontractor shall, during the performance of this Subcontract, deliver all documentation and reports specified in Appendix 2, in the required number of paper copies and in an electronic file. These shall be sent to the Contractor's Technical Officer mentioned in Article 5, Clause 5, Sub-Clause 5.1 a) of the Subcontract, unless otherwise specified, in accordance with the following specific provisions:

2.1.1.1 The draft versions of the final documents as defined in Appendix 2 shall be submitted for approval, in electronic format, to the Contractor's Technical Officer not later than the delivery dates specified in such Appendix 2.

2.1.1.2 The finalised versions thereof shall be issued not later than four (4) weeks after the approval of the draft versions, as follows:

- one (1) electronic copy to the Contractor's Technical Officer.

#### 2.1.2 Software

The source and object code relevant to the software, mathematical models, data files, design files and computer programmes, specified in Appendix 2 shall be delivered to the Contractor's Technical Officer, not later than the delivery dates specified in such Appendix 2.

### **2.2. Meetings**

Meetings, reviews and the Final Presentation shall be held as specified in the applicable documents listed under Article 1 above on dates and venues to be agreed between the parties, if not already defined in Appendix 2.

## **ARTICLE 3 - PRICE & PAYMENT**

### **3.1. Price**

The price of this Subcontract amounts to:

17 991.17 EUR  
(seventeen thousand nine hundred ninety-one Euro and seventeen cents),

The Contractor may decide that certain items produced or purchased under the Subcontract during its implementation (see Article 4 below) shall become ESA Fixed Assets. Such items shall be identified as becoming ESA Fixed Assets through the means of a Subcontract Change Notice.

3.1.1 The type of price is the following:

A Firm Fixed Price as defined in Section 2.1 of Annex II to the GCC.

3.1.2 The above amount does not include any taxes or duties.

3.1.3 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.

3.1.4 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS® 2010, to the addressee(s) specified in Article 5, Clause 5, Sub-Clause 5.1 a) of the Subcontract. Reference to INCOTERMS® in this provision is exclusively for the purpose of price definition.

### **3.2. Payment**

3.2.1 General provisions

The Payment Plan and advance payment off-setting conditions applicable to this Subcontract are specified in Appendix 1 hereto.

The advance payment constitutes a debt of the Subcontractor to the Contractor until it has been set-off against subsequent milestone(s) as shown in Appendix 1 hereto.

In the event that the achievement of a milestone is delayed but the milestone is partially met at the milestone planning date foreseen, the 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.

When releasing the payment for a given milestone, if applicable, the Contractor's payment shall be made after due deduction of the corresponding off-set of the advance payment(s) as per conditions of Appendix 1 to the subcontract (Payment plan and advance payment(s) and other financial conditions).

In case of partial payment, the 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.

Payments shall be made within thirty (30) calendar days after the reception of the electronic invoice by the Contractor.

Payments shall be made by the 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 Contractor on time if the Contractor's orders of payment reach the Subcontractor's bank within the payment period stipulated in the paragraph above.

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

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

In the case of invoices submitted by the Subcontractor which are free of VAT, reference shall be made to the number indicated on the VAT Exemption Form which the Contractor provided to the Subcontractor when forwarding two (2) originals of the present Subcontract for signature.

3.2.2 Requirements for Advance Payment Requests (APR) and invoices being regarded as due:

Advance Payment:

- APR: to be submitted after signature of this Subcontract by both Parties.

Progress Payment(s):

- Milestone Achievement Confirmation (MAC) hereinafter referred to as "confirmation" with supporting documentation. The supporting documentation shall justify the actual achievement of the milestone(s) as defined in the Payment Plan specified in Appendix 1 hereto.

and

- Invoice(s);

Final Settlement:

- Confirmation, with supporting documentation. The supporting documentation shall justify the actual achievement of the milestones as defined on the Payment Plan Specified in Appendix 1 hereto.

and

- Certification by the Agency that the final settlement has been satisfactorily completed.

and

- Invoice(s);

and

- Receipt and acceptance, by the Contractor, of all deliverable items, of the services to be rendered and other obligations to be fulfilled, in accordance with the terms of this Subcontract;

### 3.2.3 Implementation of payments conditions

The Subcontractor shall ensure that all advance payment requests, invoices and confirmations are submitted for payment exclusively to the Contractor.

The Contractor shall credit the account of the Subcontractor to the Subcontractor's benefit.

## **ARTICLE 4 - MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE SUBCONTRACT**

Not applicable.

## **ARTICLE 5 - COMPLEMENTS AND AMENDMENTS TO THE GCC**

The General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002, rev. 2, apply to this Subcontract with the following complements and amendments. Provisions of the GCC not mentioned in this Subcontract shall apply unchanged.

### **PART I: CONDITIONS APPLICABLE TO SUBCONTRACTS OF ESA CONTRACTS**

#### **CLAUSE 5: THE PARTIES' REPRESENTATIVES**

##### Sub-Clause 5.1: The Contractor's Representatives

The Contractor's representatives are:

- a) Mr Jiří Doubek 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	Mr Jiří Doubek	Mr Petr Bareš
Telephone	+420 23535 1000	
e-mail	jiri.doubek@iguassu.cz	
Mail Address	Iguassu Software Systems a.s. Evropská 120, 160 00 Praha 6, Czech Republic	

- b) Mr Petr Bareš for contractual and administrative matters or a person duly authorised by him ("Contracts Officer").

All correspondence for contractual and administrative matters:

	To:	With copy to:
Name	Mr Petr Bareš	Mr Jiří Doubek
Telephone No.	+420 23535 1000	

Fax No.	+44 7092 034415
e-mail address	petr@iguassu.cz
Mail Address	Iguassu Software Systems a.s. Evropská 120, 160 00 Praha 6, Czech Republic

**Sub-Clause 5.2: The Subcontractor’s Representatives**

The Subcontractor’s representatives are:

- a) Mr Zdeněk Moravec 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	Zdeněk Moravec	Bohuslav Matouš matous@hapteplice.cz
Telephone No.	+420 773 791 438	
Fax No.	N/A	
e-mail address	moravec@hapteplice.cz	
Mail Address	Kopernikova 3062, 415 01 Teplice, Czech Republic	

- b) Mr Zdeněk Moravec 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	Zdeněk Moravec	Bohuslav Matouš matous@hapteplice.cz
Telephone No.	+420 773 791 438	
Fax No.	N/A	
e-mail address	moravec@hapteplice.cz	
Mail Address	Kopernikova 3062, 415 01 Teplice, Czech Republic	

**CLAUSE 9: KEY PERSONNEL**

The Subcontractor’s key personnel is listed in the Contractor’s proposal referred to in Article 1.2 above.

**CLAUSE 10: SUB-CONTRACTS**

Part of the work, as described in the Contractor’s proposal, is to be sub-contracted to the Subcontractors listed in Article 3.1 above.

In relation to Article 3.2.3 above, the following provisions are added to Clause 10 of the GCC:

The Contractor shall ensure that provisions A) and B) hereunder are duly reflected. It is explicitly understood that the communication channel described below shall not replace the normal communication lines within the consortium, and the overall responsibility of the Contractor to ensure proper and timely contractualisation and payments throughout the consortium:

- A) With a view to optimise Subcontractors' time to payment and financial coverage, and to facilitate, when needed, the resolution of such issues, the Agency has established a dedicated centralised email address.

Should any 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 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: [indirectpayments@esa.int](mailto:indirectpayments@esa.int)

- B) 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 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.

In case any Subcontractor has SME status, as per the definition of SMEs given by the European Commission:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0361&from=EN>,

the Contractor shall ensure that the relevant subcontract foresees an automatic grant of a 35% Advance Payment.

The Contractor shall have the responsibility of obtaining the self-certification of the Subcontractor(s) SME status as per certification model provided in the tender documentation.

### **CLAUSE 13: CHANGES**

Only changes agreed in accordance with the Subcontract Change Procedure are deemed valid changes of the Subcontract.

### **CLAUSE 16: 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 arise to provide 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 Agency in accordance with the provisions of such export control laws and regulations.

## **CLAUSE 16: ACCEPTANCE AND REJECTION**

### 16.1 Acceptance of Documentation and Reports

As regards Documentation and reports, should the Contractor's Technical Officer not accept the deliverables from the Subcontractor, he shall so inform the Subcontractor with the relevant justification. If no decision has been notified to the Subcontractor within one (1) month of receipt by the Contractor of the deliverables, such shall be considered as having been accepted.

### 16.2 Acceptance of Software

#### Provisional Acceptance

The Subcontractor shall present the deliverable items (including associated documentation) to the Contractor for provisional acceptance as specified in Appendix 2.

The provisional acceptance tests shall be run in accordance with the approved version of the Acceptance Test Plan to be submitted by the Subcontractor and approved by the Contractor. The content of and the period required for the performance of the provisional acceptance tests shall be stated in the Acceptance Test Plan.

On satisfactory completion of the tests, a certificate of provisional acceptance shall be prepared by the Contractor and submitted to the Agency's Technical Officer who shall have one month to sign off the document, reject the delivery or to make reservations. If no decision has been notified to the Contractor within one month of receipt by the Agency of the provisional acceptance certificate, the deliverable item shall be considered as having been provisionally accepted.

Rejected items must be rendered compliant to Appendix 2, at the Contractor's expense, and re-presented for provisional acceptance within the time scale fixed in writing by the Agency.

#### Final Acceptance

The objective of the final acceptance testing is to establish whether the deliverable items are complete and meet the performance, reliability and availability requirements as stated in Appendix 2.

On satisfactory completion of the final acceptance test, the Agency's responsible Technical Officer shall issue a Certificate of Final Acceptance.

Rejected items must be rendered compliant to Appendix 2, at the Contractor'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 both the period of provisional and final acceptance. The related costs incurred during these periods shall be borne by the Subcontractor.

16.3.2 Assistance by other Contractors in the Acceptance Process

Not applicable.

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 2.

**CLAUSE 17: PENALTIES/INCENTIVES**

Penalties for late delivery do not apply.

**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 the Czech Republic. 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 Praha, Czech Republic. The language of arbitration shall be shall be British English.

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

### **1. Part II (Option A) of the GCC - OPERATIONAL SOFTWARE**

#### **CLAUSE 36 – GENERAL, CLAUSE 39 – OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS, CLAUSE 42 – SOFTWARE (OPERATIONAL SOFTWARE)**

- 1.1 For the purpose of this Subcontract, Part II, Option A of the GCC shall apply, as modified by the special provisions below.
- 1.2 In the event of any conflict between the provisions in this Subcontract and the provisions in Part II (Option A), the provisions in this Subcontract shall prevail. Clause 36.1 of the GCC shall remain unaffected.
- 1.3 The free licenses provided for the benefit of the Agency in the present Subcontract and in Part II of the GCC, shall be deemed granted through signature of the present Subcontract and without the need to implement a separate license.
- 1.4 The provisions contained in this Subcontract relating to Intellectual Property Rights in software, shall apply mutatis mutandis also to any Documentation and hardware to be produced and delivered under this Subcontract.

### **2. Definitions**

For the purpose of this Subcontract, including also the Appendices to it, the following definitions shall apply, unless other definitions of those terms are introduced in a Contract Change Notice (CCN) to this Subcontract.

**“Work Results”** mean all results of the Subcontractor’s work rendered under this Subcontract and/or a CCN to this Subcontract.

In the case of software development, Work Results shall include all deliverables and any further specific software deliverable as detailed in this Subcontract and/or the relevant CCN to this Subcontract. Therefore, software includes not only the actual source code but also any associated item such as technical documentation, user documentation, specifications, interfaces definitions, training material, databases, test data or designs, test products, configuration data, prototypes, technical analysis output documentation, etc.

In case the Subcontractor shall modify, enhance or make another alteration to an existing software of the Agency and the Agency has provided to the Subcontractor therefore this pre-existing software product for which the services under this Subcontract and/or a CCN to this Subcontract shall be rendered, the “Work Results” are any incremental work in source code of such pre-existing software product constituting modifications, corrections, additions, extensions or improvements to the pre-existing software product or any translation of the pre-existing software product in any other computer language as a result of the Subcontractor’s services. Incremental work means here what is gained or added to the pre-existing software product.

In case the Agency has not provided to the Subcontractor a pre-existing software product, the “Work Results” are any software and associated item developed by the Subcontractor under this Subcontract and/or a CCN to this Subcontract in any forms.

“**Deliverable**” is any item to be delivered to the Contractor as specified in this Subcontract or any relevant CCN thereto. This includes all Work Results and may include further items, which are explicitly listed in this Subcontract and/or the relevant CCN to this Subcontract.

“**Third Party**” means any party other than the Agency, Contractor or Subcontractor.

“**Third Party Product**” is any software, (e.g. proprietary software or open source software, including also but not limited to software tools, libraries, code, designs, etc.) and associated items for which the Agency does not have the full usage, exploitation and distribution rights as defined in Section 3 below. For the avoidance of doubt, Third Party Product shall include also any existing software and associated items of the Contractor or of his Sub-Contractors.

### **3. Assignment of Intellectual Property Rights, Licences Granted**

All Work Results under this Subcontract and/or the relevant CCN to this Subcontract shall be deemed Operational Software in the sense of Part II (Option A) of the GCC (see Clause 39.2 c), Clause 42.8 and Annex IV of the GCC). All these Work Results shall be delivered at each milestone with full ESA Intellectual Property Rights (as defined in the GCC). The rights granted to the Agency according to the present Subcontract and Part II of the GCC shall take effect upon delivery of the respective item to the Agency.

3.1 In accordance with Clause 42.8 of the GCC and subject to the terms and conditions of this Subcontract, the Subcontractor shall assign and transfer to the Agency full ownership of all Intellectual Property Rights, including the ownership of copyright, in and to the Work Results.

3.2 The rights assigned to the Agency shall include, but not be limited to, the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time or purpose to:

- Install, operate and execute the Work Results by the Agency or any licensee of the Agency for any purposes the Agency or the licensee sees fit.
- Incorporate, embed or merge the Work Results into any other software product.
- Permanently or temporarily reproduce or copy the Work Results by any means and in any form, in part or in whole, including loading, displaying, running, transmission or storage of the Work Results.
- Modify, correct, maintain, change, add, enhance, translate, adapt, re-arrange, link or make any other alteration of the Work Results and to reproduce the results thereof.
- Compile or re-compile the source code belonging to the Work Results and distribute the resulting object code in any form.
- Prepare derivative works of the Work Results.
- Distribute, rent, offer and market the Work Results, including any derivative works of the Work Results, in any form directly or indirectly to the public, including the right for online-distribution.
- Grant wire-connected or wireless public access to the Work Results for any purpose, including commercial or free service bureau services for Third Parties.

- 3.3 The Agency may permanently or temporarily transfer all or single rights granted to the Agency in whole or in part to a Third Party in its sole discretion.
- 3.4 The Agency may in its sole discretion distribute the Work Results under any open source licence the Agency deems fit and this shall include also the right for the Agency to grant such rights to another organisation, which will distribute the software under an open source license.
- 3.5 The Agency may, against payment or free of charge, permanently or temporarily, grant exclusive or non-exclusive licenses or sublicenses for all or single rights granted to the Agency in whole or in part to a Third Party in its sole discretion, either directly by the Agency or indirectly by a distributor.
- 3.6 Notwithstanding that the Contractor has granted to the Agency exclusive rights, the Agency shall not be obliged to exercise the rights granted and the Agency shall be entitled to decide in its sole discretion to exercise all or parts of the rights granted hereunder.
- 3.7 The Agency may make use of the Work Results in any known manner and for any known type of use, as well as all yet unknown types of use. Unknown types of use are all yet unknown technical and/or commercial manners to use or exploit a Work Result. The Agency shall inform the Contractor in case the Agency intends to start using the Work Results in whole or in part in a yet unknown type of use and both parties shall mutually agree to an adequate and appropriate additional compensation, if any, for the Contractor depending on the new type of use before the Agency starts to use the Work Results in this new type of use.
- 3.8 The intended purpose of the assignment and transfer of full ownership of all Intellectual Property Rights to the Agency is to enable the Agency to act as the full and only owner of the Work Results without any limitation. Therefore, subject to the condition that under the law applying to the Subcontract an assignment and transfer of the copyright is lawfully not possible, the Subcontractor agrees to and herewith shall grant to the Agency an irrevocable and worldwide exclusive license for the Work Results, including the grant of the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time or purpose and including all the rights as listed in this Section 3. For the avoidance of doubt, no additional royalty fee shall be paid by the Agency for such license grant.

#### **4. Waiver of Moral Rights**

- 4.1 The Subcontractor shall secure by agreements with those of his employees, who have worked on the Work Results, that those employees have waived their right to be named as an author and have waived all their other moral rights in regard to the Work Results, e.g. the right of an author to have access to its work.
- 4.2 If a waiver of a moral right of an author is legally not possible, the Subcontractor shall at least secure by written agreements with his employees that they waive their rights to execute such moral rights for the maximum period of time legally possible.
- 4.3 In case also such a waiver to execute the moral rights is legally not possible, the Subcontractor shall take all steps possible in the respective jurisdiction to achieve, to the maximum extent

possible, the objectives described in the above Sections 4.1 and 4.2. In this case, the Subcontractor shall inform the Agency of all steps it has taken.

- 4.4 The same shall apply for all free lancers and employees of Sub-Contractors of the Contractor and the Contractor is obliged to secure such waivers in written agreements with its free lancers and Sub-Contractors.

## **5. Transfer of Ownership**

The Subcontractor shall transfer all ownership in material objects embodying the Work Results (CD ROM etc.) to the Agency free from any encumbrances.

## **6. Time of Transfer of Ownership**

The Subcontractor transfers the ownership of material objects embodying the Work Results in accordance with Section 5 above at the time such material objects come into existence.

## **7. Confidentiality**

All Documentation and other information of whatever kind and nature supplied or disclosed directly or indirectly by the Agency under this Subcontract and/or the relevant CCN to this Subcontract, including also but not limited to software in source code and object code, interfaces, specifications of software or interfaces, algorithms, ideas and principles which underlie any element of software, including those which underlie interfaces, and other related know how, as well as all Documentation and other information produced by the Subcontractor or the Agency under this Subcontract and/or the relevant CCN to this Subcontract are deemed to be “ESA Unclassified - Proprietary Information”, unless stricter security standards apply, even if not marked as such, and the provisions of Clause 38.1 of the GCC and the ESA Security Directives shall apply.

All Work Result items (e.g. any information, documentation or material, in whatever format or media) shall bear the resp. Agency’s information classification marker as defined by ESA Security Directives. Unless otherwise specified, any Work Result item is considered “ESA Unclassified - Proprietary Information”.

In addition to Clause 38 of the GCC, the parties agree that the Subcontractor shall not Disclose (as defined in Annex IV to the GCC) and shall hold in confidence any such documentation and other information in accordance with Clause 38 of the GCC.

The Subcontractor shall ensure that his staff observes complete discretion during and after the performance of the Subcontract with regard to the subject matter of the Subcontract or CCNs to this Subcontract as well as any work rendered or delivery made in connection therewith.

In order to ensure that each member of the Subcontractor’s staff assigned to this Subcontract is aware of the above, the Subcontractor shall ensure that they sign a “Confidentiality Undertaking” in accordance with the model attached in Appendix 6 hereto. The Subcontractor’s Technical Officer shall keep at the disposal of the Agency all signed “Confidentiality Undertaking” statements and supply copies of such statements to the Agency, if requested.

In addition to the above, formal confidentiality procedures and additional security requirements may be established in a CCN. The Subcontractor herewith undertakes to comply with such procedures and additional security requirements and to obtain all required security clearances for his company, his sites and his staff.

## **8. Third Party Products**

### **8.1 Work Results free from any Third Party Intellectual Property Rights**

8.1.1 The Subcontractor guarantees that the Work Results are not restricted by rights of anyone, including also but not limited to rights already owned by the Subcontractor at the start of this Subcontract and/or the relevant CCN to this Subcontract. Therefore, the Subcontractor guarantees that he has all legal rights to grant to the Agency the rights in accordance with the above Section 3 and that therefore, subject to Clauses 8.2 and 8.3, Work Results do not contain any software subject to a Background Intellectual Property Right or an open source licence or are covered by any other Third Party Intellectual Property Right.

8.1.2 The Subcontractor guarantees that the Work Results, the transfer of ownership and the licences granted under this Subcontract will not infringe any Intellectual Property Right (as defined in Annex IV to the GCC) of any Third Party.

8.1.3 In case of an infringement of any Third Party Intellectual Property Right Clause 26 of the GCC shall apply.

### **8.2 Approval Procedure to use elements of a Third Party Product**

8.2.1 The use of any Third Party Product for the development of the Deliverables under this Subcontract needs the explicit prior written approval by the Agency's Technical Officer. This approval shall be deemed given by way of the Agency's acceptance of the Subcontractor's proposal (not attached hereto but known to both parties, as per Article 1.2 of this Subcontract), provided that the relevant Third Party Products are listed there in a dedicated Chapter. Should the use of any Third Party Product be proposed by the Subcontractor after signature of the Subcontract, such approval shall be deemed given by the Agency's signature of the CCN, in which such Third Party Products are listed. Any agreement on the use of Third Party Products made in a different way shall be deemed invalid.

8.2.2 Unless otherwise specified in this Subcontract and/or the relevant CCN to this Subcontract, it shall be the obligation of the Subcontractor to verify and confirm in writing to the Agency that the licence, under which a Third Party Product shall be licensed to the Agency, grants the Agency at least the same, but non-exclusive perpetual usage, distribution and exploitation rights as set forth in Section 3 above.

However, the Agency reserves the right to request in this Subcontract and/or the relevant CCN to this Contract a limited sub-set of those usage, distribution and exploitation rights.

8.2.3 With any request of the Subcontractor to obtain the Agency's approval to use a Third Party Product, the Subcontractor shall provide the Agency also with the following information:

- Exact name and, if applicable, version of the Third Party Product.

- Exact intended use of the Third Party Product, in particular, by stating whether it is needed in order to build the application to be delivered and/or in order to run the application to be delivered.
- Exact source of supply, e.g. in case of delivery the suppliers company name and address, in case of download also the exact internet address and date, from where and when the download was made.
- Full and complete copy of the licence agreement, under which the Third Party Product is licensed.
- Statement as to whether any dispute relating to the license agreement will be subject to arbitration procedures or to normal court procedures.
- If the Subcontractor is allowed to do so, the Subcontractor shall provide and license, based on a separate licence agreement with the Agency, to the Agency a complete copy on a physical media of the original Third Party Product.
- In case the verification of a licence for a Third Party Product by the Subcontractor results, that the licence deviates in one or more points from the requirements set in Section 8.2.2, the Subcontractor shall also provide an exhaustive list where the licence for this Third Party Product deviates from the rights to be granted to the Agency in accordance with Section 8.2.2 above.

8.2.4 Upon the written request of the Subcontractor to use a Third Party Product, the Agency will decide within reasonable time, whether or not the use of the Third Party Product is acceptable.

As part of its decision, the Agency will inform the Subcontractor, whether the Subcontractor shall licence/sub-license the Third Party Product to the Agency or whether the Agency shall license the Third Party Product directly from the named licensor of the Third Party Product.

8.2.5 In case the Subcontractor shall license/sub-license the Third Party Product to the Agency, the Subcontractor shall confirm in writing to the Agency that he has obtained the rights to legally sub-license to the Agency the relevant rights for the relevant Third Party Product as required in this Subcontract and/or the relevant CCN to this Subcontract and the Subcontractor shall expressly grant the licence as agreed and accepted by the Agency in this Subcontract and/or the relevant CCN to this Subcontract to the Agency for the Third Party Product.

In case the Agency shall license the Third Party Product directly from the named licensor, it shall be the Agency's obligation to obtain all relevant licences and permits required to use the approved Third Party Product in the intended way. Unless otherwise agreed in a relevant CCN, this shall not release the Subcontractor from his obligation to provide the information and confirmation listed in Section 8.2.3 above.

### 8.3 Rights already owned by the Sub-Contractors at the start of the work

The Subcontractor undertakes that all Intellectual Property Rights employed during the execution of this Subcontract are treated as arising from work performed under this

Subcontract. The Subcontractor agrees that he shall not make claims under Clause 43.1 of the GCC during the execution of his Subcontract or any time thereafter. This shall not apply in cases, where the Agency has granted its prior written approval (in the form as described under 8.2.1 above) for the use of the specific Background Intellectual Property Rights as defined below.

With reference to Clause 38.2 of the GCC, the Subcontractor shall not mark any documents as “Proprietary Information” unless agreed in advance with the Agency. Any request from the Subcontractor to mark Documentation as “Proprietary Information” shall be submitted together with an appropriate justification. The access rights granted to the Agency’s employees under sub-clause 38.2 are hereby extended to contractor staff hired by the Agency to provide technical, management, legal or administrative support to the Agency as long as such staff has signed an engagement of confidentiality.

In case the Subcontractor intends to use or re-use already existing software, for which he owns the Intellectual Property Rights, the following provisions shall apply in addition to Section 8.2 above:

8.3.1 As part of the approval request, the following additional information shall be provided:

- Whether or not the respective software has been developed under a subcontract with the Agency, and if so:
  - Number(s) of the contract under which the software has been developed and/or altered,
  - The rights granted to the Agency under this subcontract(s),
- The rights granted by the Subcontractor to any Third Party as part of other contractual agreements.

8.3.2 The Subcontractor, as the case may be, shall offer the Agency a licence in the relevant software, which is already owned by the Subcontractor at the start of the work, in accordance with Section 3.8 above, provided however, that such licence shall be non-exclusive. In case of software developed or altered under a contract with the Agency, this shall apply to those rights, which have not already been granted to the Agency under such former contract(s).

8.3.3 For the avoidance of doubt, Section 8.2.5 shall apply for the licensing of the pre-existing software to the Agency.

#### 8.4 Documentation, Delivery, Exclusion of Acceptance

8.4.1 With making a Deliverable available to the Contractor, the Subcontractor shall produce and attach a Delivery Note:

- Stating that the Deliverables do not contain any not-approved Third Party Product,
- Including a list of all approved Third Party Products (name and version) included in the Deliverables,
- Including a list of all approved reused pre-existing software originally belonging to the Subcontractor,
- Including a list of all Work Results included in the Deliverables.

- 8.4.2 If the Deliverables contain any Third Party Product, for which the Agency has not given its prior written approval in the form described in 8.2.1 above, such Deliverables are not in conformity with the Contract and cannot be accepted by the Agency.
- 8.4.3 However, for the avoidance of doubt, any acceptance is made only in respect of technical aspects of the Deliverables and, in particular, any acceptance of a Deliverable including a Third Party Product not prior approved by the Contractor does not release the Subcontractor from its liability under this Subcontract to develop and deliver all Work Results free of any Third Party Product and does not constitute a waiver of the Agency of its rights under this Subcontract, e.g. claim for damages.

## **9. Copyright Information**

The following copyright information shall be included:

### **9.1 Documents**

The following copyright statement shall be included on the first page following the cover page of any document, for which the Agency owns the Intellectual Property Rights:

“The copyright of this document is vested in the European Space Agency. This document may only be reproduced in whole or in part, stored in a retrieval system, transmitted in any form, or by any means electronically, mechanically, or by photocopying, or otherwise, with the prior written permission of the Agency.”

The following copyright statement shall be included in the footer of each page (with the year stated as applicable), including the cover page, using a font size of 8:

“© Copyright European Space Agency, 20xx”

### **9.2 Software files**

The Subcontractor shall insert the following copyright statement in all software files of its Work Results as a comment in the header:

“© Copyright European Space Agency, 20xx”

For both Documentation and software “xx” shall indicate each year, in which the document/software was created, modified and/or updated.

## **10. Modification of existing open source software**

If the scope of a task under this Subcontract includes the modification of an open source software, the use of which has been approved by the Contractor, and if not otherwise agreed in this Subcontract or a CCN to the Subcontract, the open source software shall be delivered to the Contractor in its original and modified version under the original open source licence.

## **11. Trademarks**

- 11.1 All product names, trademarks, service marks, trade names, logos or other words or symbols identifying the products or services of the Agency (collectively, the “Marks”) are and will remain the exclusive property of the Agency, whether or not specifically recognized or perfected under the laws of the Member States.
- 11.2 The Subcontractor will not take any action that jeopardizes the Agency’s proprietary rights whether registered or not, or acquire any rights in any state, in the Marks.

## **ARTICLE 6 - ADDITIONAL SPECIAL CONDITIONS**

### **6.1 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 5 Clauses 6 and 11 as well as Chapters IV, V, VI and IX and PART II of the GCC as modified by this Subcontract and Articles 4 (Items produced or purchased under the Subcontract) and Appendix 6 (Confidentiality Undertaking Model) of this Subcontract.

### **6.2 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 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.

Done in two originals, one for each Party to this Subcontract,

In: Praha

In: Teplice

On:

On:

For Iguassu Software Systems a.s.

For the North-Bohemian Observatory and  
Planetarium in Teplice

---

Petr Bareš  
Managing Director

---

Zdeněk Moravec  
Director

**APPENDIX 1: PAYMENT PLAN AND ADVANCE PAYMENT(S) AND OTHER FINANCIAL CONDITIONS**

<b>Milestone (MS) Description</b>	<b>Schedule Date</b>	<b>Payments from ESA to (Prime) Contractor in EURO</b>	<b>Country (ISO code)</b>
Progress (MS 1): Upon successful completion of DEL*01 and successful acceptance of all related deliverables	31.08.2018	8,995.59	CZ
Progress (MS 2): Upon successful completion of Task 3 and successful acceptance of all related deliverables	31.05.2019	7,196.47	
Final Settlement (MS 3): Upon End of Warranty and the Agency's acceptance of all deliverable items due under the Contract and the Contractor's fulfilment of all other contractual obligations including submission of the Contract Closure Documentation	31.05.2020	1,799.11	
<b>TOTAL</b>		<b>17,991.17</b>	

**APPENDIX 2: STATEMENT OF WORK**

The Statement of Work is known by both parties and is not attached to this subcontract.

**APPENDIX 3: STANDARD REQUIREMENTS FOR MANAGEMENT, REPORTING, MEETINGS AND DELIVERABLES**

Not applicable.

## **APPENDIX 4: INVENTORY/FIXED ASSET RECORD**

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

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

For all items:

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

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

- Acquisition value
  - revision of this value as a result of change(s) to the asset
- Impairment report of each ESA Fixed Asset remaining in the custody of the 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 Subcontractor)
  - 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 Subcontract.	Class 5	

- Note 1: Consumable items are parts, materials, supplies, components, modules, minor expendable tools, assemblies, units and subsystems which through the production process lose their identity and are absorbed directly or indirectly by the system/product to be provided under the Subcontract.
- Note 2: Consumable items in principle are not capitalised per item, however, before consumption they are identified as assets of the Agency under the collective term “Consumable”.
- Note 3: Capital items/production support equipment and tools are jigs, fixtures, devises, apparatus, instruments, machines, installations, technical facilities, buildings, computer programmes, documentation, models, samples or any other item which, after their use in or in conjunction with the production process under the Subcontract, are expected to have a residual utility or other value for the Agency.
- Note 4: Capital items have a useful life of more than one year and are identified as individual items in the Supplier and his lower tier suppliers list of Agency’s assets.

## **APPENDIX 5: CONTRACT CHANGE NOTICE**

For submission of a change as per Clause 13 of the General Conditions, the Subcontractor 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 Subcontractor's name and the Subcontract number
- The title of the area affected by the change (Work Package reference, new work, etc.)
- The name of the initiator of the change (ESA, Contractor or Subcontractor)
- 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 Subcontract 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 Subcontractor's representatives

The Subcontractor shall, on request of the Contractor, 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:	Subcontractor:	
		Subcontract No.:	
SUBCONTRACT 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 SUBCONTRACT PROVISIONS		START OF WORK	
		END OF WORK	
SUBCONTRACTOR'S PROJECT MANAGER:		SUBCONTRACTOR'S CONTRACTS OFFICER:	
DATE:		DATE:	
[DISPOSITION RECORD OR OTHER AGREED CONDITION RECORDED WITH THE CCN APPROVAL]			
CONTRACTOR'S TECHNICAL OFFICER:		CONTRACTOR'S CONTRACTS OFFICER:	
DATE:		DATE:	

## APPENDIX 6: CONFIDENTIALITY UNDERTAKING

I, Zdeněk Moravec, the director of North-Bohemian Observatory and Planetarium in Teplice, assigned to carry out work in connection with the Iguassu Subcontract No. P3-SST-III-SUB-003 (hereinafter “the Subcontract”) having been informed that in accordance with the Subcontract, all data and information, to which I may be given access for the performance of my duties in the framework of the Subcontract, as well as all Work Results under the Subcontract shall be considered without exception “ESA Unclassified – Proprietary Information”, unless stricter security standards apply, hereby undertake as follows:

1. Not to use, copy or reproduce or permit the use, copying or reproduction of any books, manuals, documents, literature, records, data or other information or material, which is not publicly available, obtained from the European Space Agency (or from other entities cooperating with the Agency) as well as any documentation and other information produced by the contractor or subcontractor, myself, the Agency or another entity or person cooperating with the Agency under the Subcontract (together called “the Material”) other than for use in connection and in accordance with the Subcontract, and I further undertake not to provide nor disclose nor permit the use, provision or disclosure orally or otherwise, either directly or indirectly of any of the Material nor any copy, summary or extract thereof to any Third Party other than to:
  - a) Other employees or representatives of North-Bohemian Observatory and Planetarium in Teplice assigned to carry out work in connection with the Subcontract, who have a need to know for purposes of the Subcontract.
  - b) The relevant staff of the Contractor concerned with the Subcontract, who have a need to know for purposes of the Subcontract.
  - c) The relevant staff of the Agency concerned with the Subcontract, who have a need to know for purposes of the Subcontract.
  - d) Any other person so duly nominated in writing by the Agency, who has a need to know for purposes of the Subcontract.
2. Upon termination for any reason of my involvement in the Subcontract, to hand to the Contractor’s Technical Officer all the Material including all copies or reproductions thereof in my possession at the time of such termination.
3. Not to use nor to disclose nor communicate either directly or indirectly to any Third Party any other information whether written or oral acquired during the course of the Subcontract, except with the prior written consent of the Agency.
4. Not to use, without the prior written consent of the Agency any of the Material or other information except for the purposes of the Subcontract.
5. All rights and obligations resulting from this Confidentiality Undertaking shall continue also after the end of my involvement in the Subcontract as well as the end of the Subcontract.

Signed \_\_\_\_\_

Date/Place \_\_\_\_\_

