DRAFT Subcontract

PERTAINING TO

Swarm DISC ITT 2.2
'Midlatitude Ionospheric Trough, Plasmapause and possibly related boundaries as determined from Swarm measurements'

between

Technical University of Denmark
National Space Institute
DK-2800 Kgs. Lyngby
CVR-no.: 30 06 09 46

(hereinafter referred to as "DTU Space")

and

[Subcontractor]
[Address]
[Address]
Company reg. no. [**]

(hereinafter referred to as the "Subcontractor")

each referred to as "Party" and collectively as "Parties"

RECITALS:

WHEREAS With contract change notice 2 (CCN 2) to ESRIN Contract No. 4000109587/13/I-NB SWARM ESL (hereinafter called the "ESL Contract") the European Space Agency (hereinafter called "ESA" or the "Agency") has requested the Swarm Data, Innovation and Science Cluster (Swarm DISC) to conduct a series of new procurement actions for new products on behalf of ESA;

WHEREAS On this background DTU Space has published the Swarm DISC ITT 2.2 – "Midlatitude Ionospheric Trough, Plasmapause and possibly related boundaries as determined from Swarm measurements" in accordance with the Swarm DISC Procurement Procedure (Doc. No. SW-RS-DTU-GS-003, Rev 1B), and the Tender Evaluation Board (as defined herein) has recommended the proposal submitted by the Subcontractor (hereinafter called the "Proposal");

WHEREAS ESA has accepted the recommendation presented by Swarm DISC, and has requested DTU Space to issue a subcontract to the ESL Contract for implementation of this proposal;

WHEREAS The Parties have agreed that the Subcontractor shall, as subcontractor to DTU Space, perform the "Swarm as a gravity field mission" activities as described in the Proposal (hereinafter called the "Project Activities") in accordance with the provisions stated below;

NOW THEREFORE the Parties enter into this Subcontract pertaining to the Project Activities (hereinafter referred to as the "Subcontract").

1. Definitions

1.1 Any definitions in the ESL Contract and its appendixes shall equally apply to this Subcontract.

2. Applicable Documents

2.1 The work shall be performed by the Subcontractor in accordance with the following documents insofar as they relate to the subcontracted work, which are listed in order of precedence in case of conflict:

2.1.1 The Articles of this Subcontract and its exhibit 5 (Payment Plan).

2.1.2 Statement of Work for Swarm DISC ITT 2.2, document no. SW-SW-DTU-GS-122, rev 1A, attached hereto as Exhibit 1.

2.1.3 The ESL Contract (excluding its Appendix 1), attached hereto as Exhibit 2.

2.1.4 General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002 attached hereto as Exhibit 3, (hereinafter called the "GCC") as amended by the ESL Contract and this Subcontract.

2.1.5 The Proposal attached hereto as Exhibit 4.

3. Subject of the Subcontract

3.1 The Subcontractor undertakes to perform the work specified in Statement of Work (Exhibit 1).

3.2 The Subcontractor shall for this purpose make available the necessary qualified personnel, services, facilities, resources and other items necessary to perform the work required for the execution of this Subcontract.

3.3 The work shall be performed according to the schedule as identified in Exhibit 4 (the Proposal).

3.4 The Subcontractor shall at all times:

3.4.1 Ensure that the Subcontractor's employees refrain from doing anything which may have the effect of putting DTU Space in breach of its obligations under the ESL Contract;

3.4.2 Ensure that in the performance of this Subcontract, the Subcontractor will not act in any way which will incur any liabilities on behalf of DTU Space in respect of this Subcontract;

3.4.3 Provide reports to DTU Space and provide other information and attend such meetings as may be required by DTU Space to ensure the efficient performance of the work specified in Exhibit 1;

3.4.4 Do all that is reasonably necessary to enable DTU Space to comply with the ESL Contract, including any audits either of a technical or financial nature required by the Agency; and

3.4.5 Take reasonable measures to ensure the accuracy of any information or materials it supplies to DTU Space (or, as the case may be, to other parties to the ESL Contract).

3.5 The Subcontractor shall afford to DTU Space and to the Agency full visibility into the performance of all related tasks at the Subcontractor's as well as lower level subcontractor's level; this shall include access to all documentation associated with the execution of the work foreseen under this Subcontract.

3.6 The ESL Contract shall mutatis mutandis apply to the Subcontractor. It is noted that the Parties' representatives pursuant to the ESL Contract's Article 5, Clause 5 shall be the ones stated in Clause 5 below.

The Parties consequently agree to flow down the terms of agreement set forth in the ESL Contract for the purpose of their delivery of work under this Subcontract (i.e. such flow down not being limited to the obligations explicitly described in this Subcontract). Thus, any mentioning of DTU Space in the ESL Contract shall, mutatis mutandis, apply to the Subcontractor in matters pertaining to their delivery of work under this Subcontract. In the event a conflict between the present Subcontract and the ESL Contract should arise, the order of precedence shall be as follows: 1) this Subcontract, 2) the ESL Contract, it being noted that this order of precedence shall not lead to an unintended disregard of the applicable documents listed in Clause 2 herein. The Subcontractor is obliged to ensure that the applicable provisions under the ESL Contract and the GCC shall apply to all lower level subcontractors.

4. Price and Payment

4.1 Price

4.1.1 The price type of the Subcontract is a Firm Fixed Price (FFP) as defined in Clause 2.1 of the GCC.

4.1.2 The total price agreed for this Subcontract amounts to EUR **75.000** (FFP).

4.1.3 The above amount does not include any taxes or duties in the member states of the Agency.

4.1.4 The price is deemed to include all applicable fees for licenses to be purchased and delivered in the frame of the Subcontract, indicating the Agency as the end user. The price is further deemed to include any and all license fees payable according to Clause 43.7 of the GCC.

4.1.5 The price is Delivered Duty Paid for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS 2010.

4.2 Payment

4.2.1 The detailed payment plan is specified in Exhibit 5.

4.2.2 The Subcontractor shall be paid in accordance with the payment plan in Exhibit 5 and the provisions of this Clause 4.

4.2.3 Advance Payment request is accepted following the signature by both Parties of this Subcontract and a successful project kick-off (Milestone MIL-01).

4.2.4 Subsequent progress payments require:

- Actual fulfilment/achievement of the milestone(s) as defined in Exhibit 4
- Confirmation submitted by the Subcontractor according to confirmation template, (attached as Exhibit 6) with supporting documentation to the extent such documentation is necessary for the purpose of documenting the fulfilment/achievement of the relevant milestone;
- Correctly issued invoice, cf. Clause 4.2.5. below.

4.2.5 Invoices must be presented to DTU Space as set out in the payment plan (Exhibit 5) and marked clearly with the following information:

- Project no. 60798 Swarm ESL/[Name of DTU Technical Representative]
- Subcontract ID: SW-CO-DTU-GS-122.

- Payment Milestone No., title and amount according to Exhibit 5.
- Subcontractor's VAT number
- If applicable, invoices shall separately show all due taxes or duties.
- Subcontractors Bank Account information, including IBAN or Swift code

4.2.6 DTU Space shall pay the Subcontractor's invoices within thirty days of receiving any such invoice provided always that:

a) The Subcontractor has fulfilled any specific deliverables within their work package associated with the payment milestone specified in Exhibit 5, including any reports due according to Exhibit 1;
b) The invoice is correctly rendered;
c) DTU Space has received the corresponding amounts from the Agency.

4.5 In the event that the Agency requires the reimbursement of any sums paid under this Subcontract, then if and to the extent that such requirement arises from the acts or omissions of the Subcontractor, the Subcontractor hereby agrees to reimburse DTU Space together with any interest charged an amount equal to the sum which the Agency requires DTU Space to reimburse.

5. The Parties' Representatives

5.1 Representatives of DTU Space:

All correspondence for technical matters shall be addressed to:

	To:
Name	
Phone	
Fax	+45 4525 9701
e-mail	
Mail Address	Swarm DISC project office DTU Space Centrifugevej, Bldg. 356, DK-2800 Kgs. Lyngby, Denmark

All correspondence for contractual and administrative matters shall be addressed to:

	To:
Name	
Phone	
Fax	+45 4525 9701
e-mail	
Mail Address	Swarm DISC project office DTU Space Centrifugevej, Bldg. 356, DK-2800 Kgs. Lyngby, Denmark

5.2 Representatives of the Subcontractor:

All correspondence for technical matters shall be addressed to:

	To:
Name	
Phone	
Fax	
e-mail	
Mail Address	

All correspondence for contractual and administrative matters shall be addressed to:

	To:	With copy to:
Name		
Phone		
Fax		
e-mail		
Mail Address		

6. Liability vis-à-vis the Agency

6.1 Should the Subcontractor for whatever reason fail to comply with its obligations under this Subcontract (e.g. by delay and/or failure to meet any technical requirements or progress and/or delivery requirements of the Subcontract) and should such failure to comply impede DTU Space's performance of the ESL Contract, the Subcontractor shall be liable directly vis-à-vis the Agency to the effect that the Agency shall be entitled to raise claim(s) for damages caused by the Subcontractors failure to comply with its obligations under the Subcontract directly against the Subcontractor and that the Subcontractor shall be obliged to honour all valid claim(s).

6.2 If damage as described in Clause 20 of the GCC (Exhibit 3) occurs to the Agency and such damage arises from gross negligence or wilful misconduct on part of the Subcontractor, the Subcontractor shall be liable directly vis-à-vis the Agency to the effect that the Agency shall be entitled to raise its claim(s) in this regard directly against the Subcontractor and that the Subcontractor shall be obliged to honour all valid claim(s).

6.3 If an infringement (or alleged infringement) of third party rights within the meaning of Clause 26 of the GCC (Exhibit 3) occurs, and such infringement is triggered by the acts or omissions of the Subcontractor, the Subcontractor shall be liable directly vis-à-vis the Agency entailing that the Subcontractor shall be obliged to indemnify the Agency from and against all claims, proceedings, damages, costs and expenses arising from the infringement or alleged infringement upon request from the Agency.

6.4 The Subcontractor shall be obliged to flow down its obligations pursuant to this Clause 6 (including this Clause 6.4) to all lower level subcontracts (it being noted that the Subcontractor on all accounts shall remain responsible and liable for its lower level subcontractors as set out in the GCC).

7. Disputes

7.1 With reference to Clause 34 of the GCC, this Subcontract shall be governed by the laws of Denmark, excluding however its conflict of laws rules.

7.2 Any dispute arising out of or in connection with this Subcontract shall be resolved by arbitration as set out in Clause 35 of the GCC. The arbitration proceedings shall take place in Copenhagen, Denmark.

7.3 DTU Space has tendered this Subcontract in accordance with the rules imposed by ESA under the reference frame of Contract No. 4000109587/13/I-NB. In the event that the ESA Industrial Ombudsman or an applicable administrative authority or court of law, decides or rules that the public procurement rules or other legislation has been infringed in relation to the award of the Subcontract with the consequence that the award decision is annulled, and this is not due to DTU Space's gross negligence or wilful misconduct, DTU Space is entitled to terminate this Subcontract with one month's notice. Neither the Subcontractor, nor DTU Space or any other party who also has entered into this Subcontract shall be entitled to any compensation, damages or indemnification in this event. The right to termination by DTU Space under this Clause shall also apply in the event that the decision, ruling or judgement is appealed.

8. Miscellaneous

8.1 This Subcontract enters into force with the date of the last signature and remains in effect until complete fulfilment of all obligations undertaken under this Subcontract, unless the ESL Contract and/or the GCC provide for early termination, cf. also Clause 3.6 above.

8.2 Unless otherwise provided for in the ESL Contract, changes to this Subcontract shall only be valid and binding if agreed in writing and signed by the duly authorized representatives of both Parties. This requirement can only be waived in writing.

8.3 Should any part or provision of this Subcontract become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Subcontract. In such a case, the Parties shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

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Exhibits:

Exhibit 1 Statement of Work for Swarm DISC ITT 2.2, document no. SW-SW-DTU-GS-122, rev 1A (separate document)

Exhibit 2 ESL Contract No. 4000109587/13/I-NB (separate document)

Exhibit 3 General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002 (separate document)

Exhibit 4 [Subcontractors proposal ...] (separate document)

Exhibit 5 Detailed Payment Plan – provided below

Exhibit 6 Confirmation template – provided below

[SIGNATURES FOLLOW ON SEPARATE PAGE]

Signatures:

For DTU Space	For Subcontractor
Place:	Place:
[date]	[date]
Kristian Pedersen, Director of DTU Space	[Name, Position]

The person appointed by subcontractor to oversee the delivery of the work, hereby declare that he or she understand and accept the terms of this Subcontract.

[Date]

[Name, Position]

Exhibit 1 – Statement of Work for Swarm DISC ITT 2.2, document no. SW-SW-DTU-GS-122, rev. 1A]

[Separate document]

Exhibit 2 – ESL Contract No. 4000109587/13/I-NB

[Separate document]

Exhibit 3 – General Clauses and Conditions for ESA Contracts, ref. ESA/REG/002

[Separate document]

Exhibit 4 – Subcontractor's proposal ref. […]

[Separate document]

Exhibit 5 – Detailed Payment Plan

Mile-stone	Description	Schedule	Payment to Prime Con-tractor (EURO)	Payment, % of total contract
MIL-01	Project Kick-Off	KO	11.250	15%
MIL-03	Acceptance of Mid Term Review	KO + 6	48.750	65%
MIL-05	Acceptance of Final Presentation	KO + 12	15.000	20%
Total			75.000	100%

Exhibit 6 – Confirmation template

Project	Swarm DISC – Data, Innovation and Science Cluster
Contract ref.	SW-CO-DTU-GS-122
Milestone no. and title	
Milestone amount	
Milestone achievement ref. proposal	
Subcontractor	