



Noordwijk, 31 March 2021

[REDACTED]
Institute of Atmospheric Physics of the
Academy of Science of the Czech Republic
Bocní II 1401, 141 31
Praha 4
Czech Republic

Exchange of Letters - PRODEX Experiment Arrangement.

Dear Madam,

With reference to the Institute Agreement signed by ESA on 7 October 2010 and by the Institute on 13 October 2010 we hereby send you the conditions of the PRODEX Experiment Arrangement between ESA and your Institute:

Institute of Atmospheric Physics – ESA Entity Code: [REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

related to C4000134494 “DFP/DAPU Electronics for Comet Interceptor – Phase B”. The ESA representative for all administrative and contractual matters is [REDACTED], and for all technical/scientific matters it is [REDACTED].

The total price of the present arrangement amounts to € 165,900. All invoices should mention the European standard “IBAN” and “BIC” as bank account identifiers; failing to do so will block the settlement of the payment.

The term of the project shall be the time period 1 January 2021 through 31 December 2022.

I would appreciate if you could sign and approve the present letters and return one original to me at your earliest convenience.

I am looking forward to a fruitful co-operation,

Sincerely Yours,

M. Lazerges
Head of the PRODEX Office

Received, accepted and signed by Institute:

Place / date: 8.4.2021

PRODEX EXPERIMENT ARRANGEMENT

ARTICLE 1: DEFINITIONS - PURPOSE OF THE ARRANGEMENT - APPENDICES

1 Throughout the present Arrangement, the terms laid down in the left column shall have the meaning set out opposite:

- | | |
|------------|--|
| “Funds”: | Maximum budget for the present Arrangement, as defined in Article 2 |
| “Project”: | Institute’s project specified in Appendix 1, certified by the Agency’s PRODEX Office as eligible for financial support according to the Financial Plan (Appendix 2) approved by the relevant Participating State |
| “Costs”: | Allowable cost of these categories, incurred by the Institute in execution of the Project: <ul style="list-style-type: none">- Labour cost- Operational costs as defined in Appendix 2- Travel expenses- |

2 By entering into the PRODEX Experiment Arrangement, hereinafter referred to as Arrangement or P.E.A., the Agency undertakes to reimburse the Institute certain costs incurred in the execution of the Project. The purpose of this arrangement is the detailed implementation of the said undertaking.

Any other arrangement or agreement by which the Institute undertakes to carry out the Project remains unaffected by the present arrangement, save that the Agency acquires hereunder the rights to access, to audit, and to obtain certain licenses in intellectual property rights; details are specified in Article 4.

3 The Institute may claim the Funds subject to the provisions set forth in Articles 2 through 4 below.

4 The Institute shall utilise the Funds and any part thereof exclusively for defraying, in due time, the Cost incurred during the term of the Project defined in Article 3.1 below.

5 Appendix 1 (Work Description) and Appendix 2 (Financial Plan) address the programme of work, schedule, deliverables and financial plan of the Project.

Appendix 1, Appendix 2 and Appendix 3 (PRODEX Experiment Arrangement Change Notice) shall form an integral part of this Arrangement.

ARTICLE 2: FUNDS AND PAYMENT

2.1 Funds

1. The Funds available for the present Arrangement amount to (see cover letter).
2. The above amount is stated to be a limit of liability in the sense defined in sections 4 and 5 of Annex II to the ESA “General Conditions”, referred to in Article 4.
3. The above amount excludes profit for the Institute (not allowed) and value added tax on the costs charged to the Agency (so far as the Agency is exempted from VAT applied by the Agency’s Member States).

4. The above amount is broken down into subtotals per cost category and/or per year as specified in Appendix 2 hereto.

2.2 Payments

1. Payments shall be made by the Agency in EURO to the account specified by the Institute. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code).
2. The Institute undertakes to provide further supporting documentation as required by the Contract, together with the electronic invoices and confirmations supporting the claims.
3. Any special charges related to the execution of payments will be borne by the Institute.
4. The Institute shall ensure that all invoices and confirmations are submitted for payment exclusively through the Agency's ESA-P system.
5. The Institute undertakes to adhere strictly to the instructions contained in ESA-P (including those for billing taxes and duties, where applicable) when submitting invoices and confirmations through the ESA-P system.
6. The Agency reserves the right to visit the Institute's premises and ascertain the progress of the work being performed under the Contract, prior to making the payment concerned.
7. ESA-P Information can be found at [REDACTED]. Any questions concerning the operation or operating status of ESA-P shall be addressed to the ESA Helpdesk ([REDACTED]). Any questions concerning the latest status of due invoices can be addressed to the ESA Payment Officer ([REDACTED]).

ARTICLE 3: TERM OF THE PROJECT

1. Term of the Project shall be the time period stated in the cover letter.
2. Cost incurred outside said term shall not entitle the Institute any payment under this Arrangement.

ARTICLE 4: OTHER CONDITIONS

The ESA "General Conditions" (General Clauses and Conditions to ESA Contracts-GCCs), available from [REDACTED] shall apply, with the amendments or replacements set forth in the **Articles** of the Arrangement. The applicable General Conditions shall be construed and interpreted with due regard to the specific nature of this Arrangement and its Article 1 in particular. The Institute signatory of the Arrangement (P.E.A.) shall be deemed the "Contractor" wherever mentioned in those General Conditions and in the rest of this document.

CLAUSE 1: APPLICABILITY OF CLAUSES AND CONDITIONS

The present General Clauses and Conditions to ESA Contracts (GCC) shall apply to Contracts placed by the Agency insofar as not stated otherwise in the relevant Contract. Furthermore, specific clauses and conditions may be set out or invoked in a Contract and its annexes and/or appendices. The annexes and/or appendices form an integral part of the Contract. **PART 1 of GCC is applicable with the following amendments.**

CLAUSE 2: APPROVAL AND ENTRY INTO FORCE

Offers and acceptances with regard to arrangements are not binding on the Agency unless approved in writing by its Director General or his authorised representative. For the purpose of this arrangement the authorised representative of the Agency's Director General is:

Dr. M. Lazerges,
Head of the PRODEX Office.
He is authorised by the Agency to sign the present arrangement on his behalf.

CLAUSE 5: THE PARTIES REPRESENTATIVES

The Agency shall have the right to check the performance of the Project, and for this purpose, the Agency nominates its representatives identified here below.

The Institute shall in this respect and in accordance with any relevant security regulations, give the representatives of the Agency access to its premises and shall give all other necessary assistance in order that they may fulfil their task.

All correspondence for either party shall be sent to the address and the representative in charge identified herein below, with a copy to the other representative(s) where any mixed nature of the matter so requires:

For the Agency to:

ESTEC
P.O. Box 299
NL-2200 AG Noordwijk

See cover letter.

For the Institute to:

The Institute's representative(s) is (are) as stated in the cover letter.

See cover letter.

CLAUSE 17: N/A.

CLAUSE 28: PAYMENT

- 28.1 The following is added to clause 28.1 of the GCCs.
Within the limits specified in Article 2, the Institute may claim in arrears payment of the Cost incurred. The Agency shall effect such payment after receipt of the respective invoice, which must identify the cost category/ies concerned and bear a statement by the Institute's financial controller that the invoiced costs are fair and reasonable, do not include profit and have been incurred exclusively in execution of the Project as defined in Article 1 and during the term specified in Article 3.
Any payment which is not the final payment of the contract is called "progress payment".

28.3 N/A

28.4.1 N/A

CLAUSE 30: (TERMINATION) GENERAL RULE

The following is added to clause 30, before the text in the GCC.

Notwithstanding any other provision of this Arrangement, the Agency shall have the right to terminate a Contract either wholly or in part by giving written notice by registered mail. This may include the case where the Participating State representatives having approved Appendix 2 demand the termination of the activities in writing.

CLAUSE 33: TERMINATION IN SPECIAL CASES

The following is added to clause 33, before 33.1

Notwithstanding any other provision of this Arrangement, the Agency may:

- i) Cease to effect any payments not already fallen due under this arrangement in case of unsatisfactory progress within the Project, provided the Participating State representatives having approved Appendix 2 demand cessation of payments in writing;
- ii) Cease to effect any payments in any of the following cases:
 - a situation as per Clause 33.1 lit. a) of the General Conditions occurs;
 - a situation as specified in Paragraph iv) below occurs.
- iii) The Agency may require the Institute to return to the Agency payments effected under this arrangement if and to the extent an audit carried out by the Agency or by the relevant national audit authority reveals any incorrectness of invoices or unauthorised use of Funds.
- iv) The Agency may require the Institute to return to the Agency all payments effected under this arrangement in case a situation as per Clause 33.1 lit. b) of the General Conditions occurs.

CLAUSE 34: APPLICABLE LAW

The arrangement shall be governed by the laws of the country of residence of the Institute.

CLAUSE 35: DISPUTE RESOLUTION

The arbitration proceedings referred to in Clause 35.2 shall take place in the capital city of the country of residence of the Institute.

PART II OPTION A of the GCC is applicable with the following amendments:

CLAUSE 37.1: Deliverables are identified in the specific section of Appendix 1 (Deliverables).

CLAUSE 39: Clause 39.2 lit. a) is not applicable.

CLAUSE 40: Clauses 40.4 to 40.6 are not applicable.

CLAUSE 41: Cancelled and replaced by the following.

CLAUSE 41: USE OF INTELLECTUAL PROPERTY RIGHTS

Use/Licensing

41.1 All Intellectual Property Rights arising from work performed under the Agency Contract shall be available to:

a) The Agency to use on a free, worldwide licence for the Agency's Own Requirements (such licence to be granted by the Contractor as set out in the standard licence which the licensee shall be entered into if required);

b) Participating States and Persons and Bodies to use on Financial Conditions for the Agency's Own Requirements (such licence to be granted by the Contractor as set out in the standard licence which the licensee shall enter into if required);

c) Any Third Party on Market Conditions to use for purposes other than the Agency's Own Requirements providing the Contractor agrees such use is not contrary to its Legitimate Commercial Interests.

41.2 For the avoidance of doubt the term "use" for the purposes of software includes use to operate, integrate, validate, maintain and modify software developed under the Agency Contract.

41.3 Where the Contractor relies on its Legitimate Commercial Interests, unless specified in the Contract it shall demonstrate those interests continue to apply every 3 years or within any other timeframe specified in the Contract.

CLAUSE 45: N/A unless specified in Appendix 1 under "Evaluation of Technology".

CLAUSE 46: Fees – cancelled. Replaced by the following.

"The Contractor shall not be required to pay a fee to the Agency if it sells a product, application, or result developed under the Agency Contract or if it licenses or assigns Intellectual Property Rights arising from work performed under the Agency Contract".

CLAUSE 47.9: N/A

Další strany nejsou určeny k uveřejnění.