

Noordwijk, 27 May 2021

██████████  
Institute of Atmospheric Physics  
Academy of Science of the Czech Republic  
Bocni II 1401, 141 31  
Praha 4  
Czech Republic

Exchange of Letters - PRODEX Experiment Arrangement.

Dear Sir,

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:

IAP-CAS – ESA Entity Code (to be used in ESA-P): 1000002304

Phone: ██████████

Email: ██████████

related to 4000134835 “Development of FSUA for LISA mission – Phase B1”. The ESA representative for all administrative and contractual matters is ██████████ and for all technical/scientific matters it is ██████████

The total price of the present arrangement amounts to € 35,660. 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 March 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: 11.6.2021

.....

## **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"><li>- Labour cost</li><li>- Operational costs as defined in Appendix 2</li><li>- Travel expenses</li><li>- ....</li></ul> |

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 <http://esa-p-help.sso.esa.int/>. Any questions concerning the operation or operating status of ESA-P shall be addressed to the ESA Helpdesk ([esait.service.desk@esa.int](mailto:esait.service.desk@esa.int)). Any questions concerning the latest status of due invoices can be addressed to the ESA Payment Officer ([esa.payment.officer@esa.int](mailto:esa.payment.officer@esa.int)).

## **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 [emits.esa.int](http://emits.esa.int), 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

## **Personal Data “Controller to Controller” Annex (the “PDCC”) of the European Space Agency (“ESA” or the “Agency”)**

This “Controller to Controller” Annex governs the processing of Personal Data exchanged by the Parties, acting as separate Controllers, in the frame of the Contract. Such Annex forms an integral part of the Contract. In case of conflict between the terms and conditions of the Contract and the terms and conditions of this Annex, the terms and conditions of this Annex shall prevail.

This Annex survives the expiration or termination of the Contract for as long as the Personal Data are protected by the Data Privacy Regulations.

### **1. DEFINITIONS**

The following specific definitions apply:

- (i) “Agreed Territory” (of Processing) means:
  - a) ESA Member States, as they are listed in the ESA website at URL: [http://www.esa.int/About\\_Us/Welcome\\_to\\_ESA/New\\_Member\\_States](http://www.esa.int/About_Us/Welcome_to_ESA/New_Member_States);
  - b) European Union;
  - c) countries recognized by the European Commission as ensuring an Adequate Level of Protection of Personal Data under the European Union’s legal framework.
  
- (ii) “Data Privacy Regulations” means respectively:
  - a) ESA PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at URL: [http://www.esa.int/About\\_Us/Law\\_at\\_ESA/Highlights\\_of\\_ESA\\_rules\\_and\\_regulations](http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations)
  - b) the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing which provide an Adequate Level of Protection under the ESA PDP Framework (e.g EU Regulations in the field of personal data protection, including but not limited to Regulation (EU) nr. 2016/679).
  
- (iii) “Personnel” means:
  - a) with respect to the Contractor: any employee, agent or representative acting under the responsibility of the Contractor or, if subcontracting is permitted, of Contractor’s subcontractors;
  - b) with respect to ESA: any employee, agent or representative acting under the responsibility of ESA (e.g. staff members and seconded agents, consultants experts or employees of third parties).

With respect to terms used with capitals in this Annex (e.g. “Controller”, “Personal Data” etc.) but not defined above, reference is made to the definitions set forth in the Data Privacy Regulations applicable according to Article 2 below.

### **2. GENERAL**

2.1 Each Party is individually and separately responsible for complying with the level of protection resulting from its Data Privacy Regulations in relation to Personal Data, being recognised that:

- a) the Contractor is governed by the Personal Data protection laws and regulations applicable to the Contractor in the Agreed Territory of Processing, which provide an Adequate Level of Protection

under the ESA PDP Framework (e.g. EU Regulations in the field of personal data protection, including but not limited to Regulation (EU) nr. 2016/679).

- b) ESA is governed by PDP Framework, i.e. the Personal Data Protection Framework applicable to ESA and available on ESA website at the URL:  
[http://www.esa.int/About\\_Us/Law\\_at\\_ESA/Highlights\\_of\\_ESA\\_rules\\_and\\_regulations](http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations)

2.2. The Parties are considered separate Data Controllers of the Personal Data, with each Party being able to determine the purpose and means of Processing the Personal Data under its control in accordance with its privacy statement.

2.3 The Personal Data exchanged by the Parties in the frame of this Contract will only be processed for:

- a) the performance of the Contract, including implementation, management, monitoring, audits and the fulfilment of the obligations set out in this Annex;
- b) the management of the relationship of the Parties in relation to the Contract, notably for administrative, financial, audit or for communication purposes;
- c) the compliance with any legal or regulatory obligation to which a Party is subject;
- d) the compliance, in case the performance of the Contract requires access to the Parties' premises, with the health, safety and security requirements, legal or regulatory obligations applicable to the respective Party in such matters.

### **3. PERSONAL DATA EXCHANGED BY THE PARTIES**

In the performance of this Contract each Party may disclose to the other Party data which may qualify as "Personal Data" under its Data Privacy Regulations as follows:

- a) the Agency shall communicate to the Contractor only the Personal Data concerning ESA representatives/contact persons including name, work address, email and telephone numbers;
- b) the Contractor shall communicate to the Agency only:
  - (i) Personal Data concerning the Contractor's representatives/contact persons including name, work address, email and telephone numbers;
  - (ii) Personal Data concerning the Contractor's key Personnel, including title, name, work address, email, telephone numbers, education, professional experience, description of the person's job and responsibilities and the precise assignment of the person to the activity under the Contract.

### **4. PARTY'S OBLIGATIONS**

4.1 Each Party is individually and separately responsible for complying with the level of protection resulting from its Data Privacy Regulations in relation to Personal Data, including the collection and update of the Personal Data that it communicates to the other Party, the lawfulness and the quality of such Personal Data and for the means by which they were collected. Should the legal basis for the collection of the Personal Data cease to exist or the quality of the Personal Data be affected, the Party will inform the other Party without undue delay.



- 4.2 The Parties shall preserve the rights and legal remedies of the Data Subject as recognised and protected in the Data Privacy Regulations applicable respectively to each Party. In particular, the Data Controller which disclosed the Personal Data to the other Party will respond to enquiries from Data Subjects and, as the case may be, from any competent authority concerning the data processing of the relevant Personal Data.
- 4.3 In case the Parties engage Processors to support their internal operations, including the Processing of the Personal Data exchanged, it is the responsibility of that Party to ensure that its Processors assume obligations consistent with the Data Privacy Regulations applicable to the respective Party, in order to guarantee an adequate level of protection of Personal Data.
- 4.4 The Party having received the other Party's Personal Data under the Contract shall Process such Personal Data only in the Agreed Territory of Processing.

## **5. DATA RETENTION**

- 5.1 The Parties shall not retain or process the Personal Data exchanged longer than is necessary to carry out the purpose described in Article 2.3 herein, unless required otherwise:
- a) under the Data Privacy Regulations, (e.g. in the frame of audits, inspections and incidents) or
  - b) under the Party's statutory obligations.
- 5.2 The retention period shall be defined in the privacy notices of the Parties.
- 5.3 All Personal Data must be, effectively destroyed/deleted upon expiration of the retention period, unless conservation of such data is required for compliance with any legal or regulatory obligation to which the Party having received the Personal Data from the other Party is subject.

## **6. CONFIDENTIALITY**

The Parties shall ensure the confidentiality of the Personal Data processed by protecting them against unauthorized or unlawful access, acquisition, use and disclosure, in particular by:

- a) limiting access to the Personal Data of the other Party only to their Personnel, that:
  - are required or authorized to access such Personal Data;
  - have committed themselves to confidentiality or are under a statutory obligation of confidentiality;
  - have received the appropriate Personal Data protection training.
- b) taking into consideration, in terms of IT tools, product, applications, the principles of personal data protection by design and by default.

## **7. SECURITY**

The Parties shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the Processing and to the nature, scope, context and purpose of the Processing, in order to ensure the following as appropriate:

- a) the on-going confidentiality, integrity, availability and resilience of Processing systems and services;
- b) measures to protect Personal Data from accidental, unlawful or unauthorized access, use, destruction, loss, modification or transfer.

## **8. DATA PROTECTION OFFICER/CONTACT POINT**

For any Personal Data protection matters, the Parties shall involve their specific contact points identified in the Contract.

## **9. TRANSFER**

The Party having received the other Party's Personal Data under the Contract shall Process (and have processed by its authorised subcontractors or sub-processors) such Personal Data only in the Agreed Territory of Processing. No transfer of Personal Data outside the Agreed Territory is allowed without prior written approval of the other Party.

## **10. SUB-CONTRACTORS**

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

- a) sub-contracting is specifically authorised by Contract and the Sub-contractors are indicated in the Contract;
- b) all the general conditions set forth in this Annex are fulfilled; in particular the Processing of the Personal Data by the Sub-contractors is performed for the purpose described in Article 2.3 herein and the Personal Data are not transferred outside the Agreed Territory.

10.2 Disclosure of the Agency's Personal Data to other third Parties requires prior approval of the Agency.

## **11. PERSONAL DATA BREACHES**

11.1 After becoming aware of a Personal Data Protection Breach falling in its area of responsibility, and affecting the Personal Data communicated by the other Party, the Party shall notify the other Party within 48 hours.

- 11.2 The Parties will provide each other reasonable assistance to facilitate the handling of the Personal Data Breach and accurate information about the breach, in particular (but not only) in case a complaint is, or likely to be, lodged by a Data Subject in relation to the Breach.

## **12. LAW – DISPUTE RESOLUTION**

Concerning Personal Data protection matters, notwithstanding any other provisions on the governing law set forth elsewhere in the Contract, the provisions set forth in the Data Privacy Regulations, as defined herein, will apply as mentioned in Article 2 herein and will prevail in case of conflict. Without prejudice to the foregoing, disputes between the Parties on Personal Data protection matters shall be settled in accordance with Clause 35 of the Contract.

**Ostatní strany nejsou určeny k uveřejnění.**