

## EUROPLEXUS EDUCATION AND RESEARCH DEVELOPMENT LICENCE AGREEMENT

### BETWEEN:

**The European Union** (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), itself represented for the purposes of signing this Agreement by Mr. Giancarlo Caratti, Head of Unit, Intellectual Property and Technology Transfer, the Joint Research Centre

hereinafter referred to as '**JRC**'

### AND:

**Le Commissariat à l'énergie atomique et aux énergies alternatives**, Etablissement Public de caractère Scientifique, Technique et Industriel (The French Alternative Energies and Atomic Energy Commission, Public Institute for Scientific, Technical and Industrial Research), whose head office is located at Bâtiment Le ponant D, 25 rue Leblanc, 75015 PARIS, registered in the Paris Trade and Companies Register under number R.C.S. PARIS B 775 685 019, represented by Mr Stéphane SARRADE, in his capacity as Director for Energies Programs of the Energies Division (DES/DPE)

hereinafter referred to as '**CEA**'

(JRC/CEA) having received mandate of signature of (CEA/JRC), acting in the name and for (JRC/CEA)

### AND:

**The organisation [legal name], [type of organisation, head office and commercial registration number],**

represented by **[name of signatory]**, in [his] [her] capacity as **[name of signatory]**,

hereinafter referred to as '**the Organisation**'

Hereinafter individually referred to as the 'Party' and collectively as the 'Parties'

## PREAMBLE

Whereas CEA and JRC have been working together since 2000 on the development of a common software program named EUROPLEXUS for the simulation of fluid-structure systems under transient dynamic loading.

Whereas CEA and JRC are co-owners of EUROPLEXUS and its related documentation.

Whereas CEA and JRC are interested in collaborating with partners who will have to develop the functionalities of EUROPLEXUS for the purposes of the Collaboration as defined hereafter.

Whereas CEA and JRC, while retaining ownership of EUROPLEXUS and its developments, would like each of their partners to have the right to use EUROPLEXUS and its developments.

Whereas CEA and JRC would like to have the use of the developments made to EUROPLEXUS by their partners so that CEA can grant commercial licences for those developments.

Whereas the Organisation has the objective of developing [description of research programme and its contractual framework as necessary].

Whereas, in return for assigning to CEA and JRC its intellectual and industrial property rights over the developments which will be integrated into EUROPLEXUS during the collaboration taking place under this Agreement, the Organisation wishes to be able to use EUROPLEXUS for educational research purposes.

Whereas CEA and JRC have agreed to grant a licence for EUROPLEXUS to the Organisation under the following conditions.

## **ARTICLE 1 - DEFINITIONS**

In this Agreement, except where the context clearly indicates a different meaning, the following terms have the meanings set forth below:

- Agreement: means the whole of this Agreement, including its annexes and any riders thereto.
- Collaboration: means [description of the research collaboration project]
- Software: means the EUROPLEXUS software co-owned by CEA and JRC in its Object Code form, and the Source Code(s) necessary for implementing the Programme and, where applicable, its documentation, 'as it is' when the Organisation accepts the Software in its version 2019. The characteristics and technical and functional specifications are outlined in Annex 1.
- Confidential Information: has the meaning given to this term in Article 5.1..
- Commercial purposes: has the meaning given to this term in Article 7.2..
- Object Code: means the binary files originating from the compilation of the Source Code.
- Source Code: means all of the Software's instructions and program lines to which access is required so as to modify the Software.
- Programme: means the development of Modules and their integration into the Software, in the framework of the Collaboration, as outlined in Annex 2.
- Module(s) : means a set of source files including their documentation that enables supplementary functions or services in addition to those offered by the Software.
- Final Software: means the Software into which the Modules have been integrated.

## **ARTICLE 2 - PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to set out the terms and conditions under which CEA and JRC grant user rights over the Software and the Final Software to the Organisation in order to implement the Programme in the framework of the Collaboration and for educational and research purposes.

## **ARTICLE 3 - COLLABORATIVE ARRANGEMENTS**

In order to ensure the proper performance of the Agreement, the Programme shall be implemented under the scientific and technical responsibility of the following persons (hereafter designated as the "Scientific Officer(s)"): :

- for the Organisation: .....
- for CEA and JRC: Nicolas LELONG (CEA/DES/ISAS/DM2S). In this Agreement, the Scientific Officer for CEA and JRC is provided by CEA, as mutually agreed upon by CEA and JRC.

The Scientific Officers are responsible for:

- ensuring the implementation of the Agreement, monitoring its progress and its performance, examining and resolving any difficulties that may arise therefrom,
- carrying out the technical monitoring of the Programme,

- overseeing the progress of the various stages of the Programme and suggesting, where appropriate, any changes to the Programme which enable it to continue under satisfactory conditions to the Parties,
- reporting to their respective managements.

#### **ARTICLE 4 - DESCRIPTION OF THE PROGRAMME**

- The Programme is defined jointly by the Organisation and CEA and/or JRC, and shall be updated as often as necessary and at least once a year under the responsibility of the Scientific Officers. The Programme is outlined in Annex 2 of this Agreement.
- The Modules developed by the Organisation under this Agreement shall comply with the quality assurance plan applied by CEA and JRC to developments to the Software.
- The Source Code, which is necessary for developing the Modules, and the Software incorporating it are supplied to the Organisation by CEA or JRC on an electronic device.

#### **ARTICLE 5 - CONFIDENTIALITY – PUBLICATION**

5.1 Without prejudice to the provisions contained in Articles 6 and 7 below, the Parties shall exchange information in their possession which is useful for the development of the Software and the Modules, hereafter designated as “Confidential Information”, subject to the provision that each Party undertakes to keep that Confidential Information strictly confidential.

The Parties undertake to uphold the confidential nature of the Confidential Information for the duration of the Agreement and after its termination, as long as the Confidential Information remains of a confidential nature, and undertake consequently:

- a) to protect the Confidential Information, keep it strictly confidential and treat it with the same degree of care and protection that it treats its own Confidential Information of the same significance;
- b) not to disclose it internally except to those of its staff members who need to know it in order to perform this Agreement, and after duly informing them of its strictly confidential nature;
- c) not to use the Confidential Information for purposes other than the purpose of this Agreement, except with the prior authorization of the disclosing Party;
- d) not to communicate it to a third party in any form, directly or indirectly, without the prior authorization of the disclosing Party;
- e) not to reproduce, copy or duplicate the Confidential Information communicated to it by the disclosing Party in any way, in whole or in part, unless it is for the internal needs mentioned in point b);
- f) at the request of the disclosing Party, to return or destroy all of the media containing the aforesaid Confidential Information.

This obligation of confidentiality shall not apply to information:

- which was in the possession of the receiving Party before this Agreement was signed or,
- which is in the public domain at the time of its disclosure or which enters the public domain other than through a breach of this Agreement, through sources authorised to disclose it or,

- which is received from a third party without restriction and without breaching this Agreement.

5.2. If, in the framework of the Collaboration and within the limits authorised by this Collaboration and its confidentiality obligations, the Organisation publishes and/or disseminates all or part of any studies and/or developments deriving from the Software or the Final Software, the Organisation is required to specify that they were accomplished by virtue of the Software and/or Final Software and must clearly refer to CEA and JRC as holders of the associated intellectual property rights on the Software and/or Final Software.

CEA and JRC reserve the right to include the Organisation's name among their references.

## **ARTICLE 6 - INTELLECTUAL PROPERTY**

### **6.1 Modules**

In return for giving the Organisation access to the Software under this Collaboration and the user rights of article 7.2, the Parties agree that any Module developed by the Organisation and integrated into the Software under the Programme shall be co-owned by CEA and JRC in equal parts.

To that end, the Organisation shall assign to CEA and JRC, exclusively and free of charge, the intellectual property rights conferred on it in accordance with the rules on intellectual property, with the result that CEA and JRC become co-owners, in the proportions indicated above, of the property rights over the Modules.

The rights assigned include, for what concerns copyright, rights of reproduction, representation, communication to the public, publication (especially in the press), adaptation, digitisation, translation, use, transformation in consideration of moral rights, dissemination, integration into another work, for all purposes, both commercial and non-commercial, promotional or non-promotional, it being specified that:

- the right of reproduction includes in particular:
  - the right to reproduce or arrange for the reproduction of the Module, by any means, in any form and on any medium, particularly video, televisual, photographic, computer, telematic, digital, electronic, paper, and on any other present or future medium, in an unlimited number of copies;
  - the right to reproduce or arrange for the reproduction of the Module on any of the media specified above with a view to integrating them into a second work, whatever the commercial purpose of that work.
- the right of representation includes in particular the right to publicly represent or arrange for the public representation of the Module or its secondary operations, including its adaptation, by any processes known or hitherto unknown, namely public or private exhibition, analogue and/or digital transmission on any open and/or private, national and/or international telecommunications IT network, for any public or private, internal or external, national or international event, in dissemination channels that are specialised or aimed at the general public.
- the right of adaptation includes in particular the right to carry out the adaptations and modifications necessary for the normal operation and the development of the Module or to arrange to have those adaptations and modifications carried out, as well as the right to transfer the Module to other hardware or to adapt it to other operating systems. It also includes the right to use extracts from the Module or elements used in its development for its reproduction and/or its representation in any derivative work.
- the right of dissemination includes in particular the right to place a copy or copies of the Modules on the market in return for payment or free of charge, including for hire, by any process.

JRC and CEA grant the Organisation a right of use ("licence-back") on the Modules, royalty-free, for all territories and the whole duration of copyright protection for R&D purposes.

A royalty-free right of use for commercial purposes could be granted to the Organisation after agreement of CEA and JRC, which will be supposed given in the absence of their reply in 30 days from the written request.

Such rights of use do however not include the right to make the software available to third parties under an open source licence, except with the prior permission of both JRC and CEA.

## 6.2 Software and Final Software

The granting of user rights over the Software and Final Software does not result in the transfer of any property rights to the Organisation: CEA and JRC remain the exclusive owners of the Software and Final Software, including the integrated Modules, and retain all of the related rights.

## **ARTICLE 7 - USE AND EXPLOITATION**

### 7.1 User rights of CEA and JRC

As co-owners, CEA and JRC are free to use the Modules developed by the Organisation, for any purpose, including commercial and promotional, in any country for the entire duration of the intellectual property rights.

CEA and JRC are free to make use of the Software and Final Software, including the Modules developed by the Organisation, for any purpose, especially commercial and promotional, in any country and for the duration of the intellectual property rights.

### 7.2 User rights of the Organisation

7.2.1 For their part, CEA and JRC hereby undertake to grant user rights over the Modules to the Organisation, free of charge and for five (5) years after the expiration of this Agreement, including the right for the Organisation to reproduce, adapt, modify and, more generally, use those Modules for internal purposes only in all of the Organisation's other software, with the exception of software that might be competing against the Software and/or the Final Software.

7.2.2 CEA and JRC grant a free and non-exclusive licence on the Software and/or the Final Software to the Organisation for the entire duration of this Agreement, solely for the purpose of implementing the Programme in the framework of the Collaboration and for educational and research purposes only. Beyond the Agreement or for any other use of the Software and/or the Final Software not provided for in this Agreement, the Organisation shall conclude another specific licence agreement with CEA.

In particular, the Organisation undertakes not to use all or part of the Software or the Final Software in order to provide services to third parties or for any promotional or Commercial Purpose.

For the purposes of the Agreement, the term 'Commercial Purpose' refers in particular to:

- generating profit or commercial revenue;
- disclosing, supplying, assigning, transferring, selling, hiring, distributing and/or making available all or part of the Software and/or Final Software to a third party;
- providing information obtained from using the Software and/or Final Software to a third party;
- using the Software and/or Final Software in research agreements, consultations or collaborations with a commercial enterprise and/or a third party if such use leads to sale.

The Organisation is authorised to make copies of the Software and the Final Software solely for its own educational and research purposes as part of the Programme.

7.2.3 This Agreement is concluded on an *intuitu personae* basis. The rights granted do not include the right for the Organisation to sub-license the Software and the Final Software to any third party or to transfer user rights over the Source Code or the Modules.

## **ARTICLE 8 - DELIVERY AND INSTALLATION OF THE SOFTWARE**

Within two (2) months of the date on which the Agreement is signed, CEA shall send to the Organisation, by registered letter with acknowledgement of receipt, a copy of the Software on an electronic device.

The Organisation shall be responsible for installing the Software at its own expense and risk and for respecting the environment and/or installation constraints necessary for the smooth operation of the Software.

## **ARTICLE 9 - FEEDBACK FROM EXPERIENCE**

In return for the rights granted to it under this Agreement, the Organisation undertakes to inform CEA and JRC, within a reasonable period of time, of its experience using the Software and the Final Software and in particular of, but not limited to, all errors or defects detected, any discrepancies between the Programme and the related documentation, any limitations to the applications of the Software and/or Final Software which might not have been indicated in the related documentation, and any developments and improvements that could be made to the Software or Final Software.

## **ARTICLE 10 - GUARANTEES**

The Organisation acknowledges that the Software is an experimental software supplied 'as it is' by CEA and JRC, without any kind of guarantee, express or implied, and in particular without any guarantee as to its commercial value or its secure, innovative or relevant nature.

In particular, CEA and JRC do not guarantee that the Software does not infringe any third-party intellectual property right relating to a patent, software or any other property right, or that the Software is free from errors, that it will operate without interruption, that it will be compatible with the Organisation's own equipment and software configuration, or that it will meet the Organisation's requirements.

CEA and JRC cannot be held liable for damage or incidents, direct or indirect, accidental or non-accidental (in particular damage to the IT network, loss of opportunities, loss of profit and/or revenue, operating losses, loss of data or other economic advantages, business interruptions), arising from the Organisation's use of all or part of the Software and/or the Software's performance as a result thereof.

The Organisation undertakes not to institute proceedings against CEA and JRC and to indemnify them against any sum or compensation that they have to pay in the event of direct or indirect damage linked to the operation of the Software by the Organisation.

The provisions of the article 10 are also applicable to the Final Software.

## **ARTICLE 11 - LIABILITY AND INSURANCE**

### **11.1 Injury to staff**

Each Party provides cover for its staff in accordance with the legislation applicable in the field of social security and the scheme covering accidents at work and occupational diseases, as well as within the framework of its own statutes, and carries out the legal formalities incumbent on it. Similarly, it is liable for the negligence of its staff, whether or not such negligence is deliberate. Therefore, compensation for injury sustained by staff as a result of or during the performance of this Agreement is given both under the legislation relating to social security and the scheme covering accidents at work and occupational diseases and within the framework of its own statutes.

### 11.2 Damage to property

Each of the Parties remains liable, without recourse against the other Party, to repair damage to its property arising as a result of or during the performance of this Agreement, except in the case of gross or deliberate negligence.

### 11.3 Third-party damage

Each of the Parties is liable according to the rules of general law for damage of any kind caused to third parties.

### 11.4 Insurance

Subject to the legal or regulatory provisions applicable to each Party, each Party must conclude and ensure the validity of the insurance policies required to provide for adequate cover, taking into account the scope afforded by the insurance market, of its risks and responsibilities both under general law and with regard to its contractual obligations.

## **ARTICLE 12 - DURATION**

This Agreement enters into force on the arrival of the first one of the 2 dates:

- The date it is signed by the last of the two Parties,
- The effective date of the Collaboration,

for a period of [...] years.

It may be extended by means of an amendment.

Each Party may terminate this Agreement at any time by giving three (3) months' notice sent by registered letter with an acknowledgement of receipt.

This Agreement may be terminated *ipso jure* by one of the Parties if the other Party does not comply with one or more of its obligations under this Agreement. Termination of the Agreement shall not become effective until one (1) month after the complaining Party has sent a registered letter setting out the reasons for the complaint unless, during that period, the Party at fault has met its obligations or has provided proof of an impediment resulting from *force majeure*. The exercise of this right does not exempt the Party at fault from fulfilling its contractual obligations until the date on which the Agreement is terminated, without prejudice to any damage that may have been suffered by the complaining Party due to the termination of the Agreement.

Unless the Parties agree otherwise, when the Collaboration is terminated, the Organisation may only continue to use the Software and/or the Final Software for educational and research purposes under the conditions agreed upon between the Parties in the Agreement and until its end.

During the month following the expiry of the Agreement or its termination, the Organisation shall destroy any originals and copies of the successive versions of the Software, and send an official declaration to CEA and JRC stating that it has fulfilled this obligation.

Articles 5, 6, 7, 11 and 13 remain in force for their own duration, notwithstanding the expiration or termination of the Agreement.

## **ARTICLE 13 - DISPUTE RESOLUTION AND APPLICABLE LAW**

This Agreement shall be construed and enforced in accordance with the French law.

The Parties agree that they will try to settle any difficulty relating to the interpretation, enforcement or termination of the Agreement amicably. If they do not manage to do so within a period of two (2) months from the occurrence of the difficulty encountered, each Party may refer the dispute to the competent Parisian courts, which will have exclusive jurisdiction.

**ARTICLE 14 - MISCELLANEOUS**

The Parties cannot be held liable for failure to fulfil one of their obligations as a result of circumstances which were beyond their control, e.g. strikes, exceptional weather events, acts of war, terrorism, riots, fires, natural disasters, malfunctioning or interruption of means of communication or telecommunication, including networks.

The Parties acknowledge that this Agreement may in no way be deemed or construed to create between the Parties a legal entity of any kind or to constitute an instrument of incorporation, *affectio societatis* being expressly excluded from this.

Under no circumstances may the Agreement and/or the rights provided for therein be transferred or assigned by one Party without the prior written consent of the other Party.

The Agreement cancels and replaces any previous agreement, written or verbal, between the Parties relating to the subject hereof and it sets out the entire agreement between the Parties on this subject. No additions or amendments to the terms of the Agreement shall be binding on the Parties unless they have been made in writing and signed by their duly authorised representatives.

DONE IN TWO ORIGINALS, ONE FOR EACH PARTY <sup>1</sup>

<b>For CEA / For JRC</b>	<b>For the Organisation</b>
Stéphane Sarrade / Director of Energies Programs /  on [date]  [signature]	[name] [position]  on [date]  [signature]

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<sup>1</sup> Keep only JRC or CEA, depending on who (JRC or CEA?) uses its mandate to sign on behalf of the other.

**ANNEX I**

**CHARACTERISTICS AND TECHNICAL SPECIFICATIONS OF EUROPLEXUS**

**ANNEX II**  
**PROGRAMME DESCRIPTION**