

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND CERTAIN GOVERNMENTS, MEMBERS OF THE AGENCY, FOR A COOPERATIVE PROGRAM CONCERNING THE DEVELOPMENT, PROCUREMENT AND USE OF A SPACE LABORATORY IN CONJUNCTION WITH THE SPACE SHUTTLE SYSTEM

Signed and proclaimed at Neuilly-sur-Seine
14 August 1973

Expired
1 January 1985

PREAMBLE

The Government of the United States of America

and

the Governments of the Federal Republic of Germany, the Kingdom of Belgium, Spain, the Kingdom of Denmark, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Swiss Confederation, parties to the Arrangement between certain Member States of the European Space Research Organisation and the European Space Research Organisation concerning the execution of the Spacelab Programme, opened for signature on 1 March 1973 (the above European Governments and such other Governments as adhere to this Agreement being referred to hereinafter as the "European Partners"),

Conscious of the challenge and potential of space exploration and convinced that international cooperation in the development and use of new mechanisms for space exploration will further strengthen the bonds of friendship between the countries involved and will in general contribute to world peace;

Recalling with satisfaction the considerable amount of cooperation in the space field already conducted and now in progress between the countries involved;

Desiring to extend and expand cooperation already conducted in the space field between the countries involved;

Convinced also that such cooperation will result in scientific, technological and economic advantages to their mutual benefit as well as the benefit of all mankind;

Recalling the invitation extended by the Government of the United States of America to Europe to cooperate in the United States post-Apollo programme;

Considering that the Government of the United States of America has established policies to make available to other nations launch assistance for scientific and applications space missions for peaceful purposes;

Noting the decision of the European Space Conference to participate in the post-Apollo programme as expressed in the Resolution adopted in Brussels on December 20, 1972;

Considering that the European Partners have entrusted to the European Space Research Organisation (hereinafter referred to as "ESRO") to undertake, as a special project, the development of a Space Laboratory (hereinafter referred to as "SL");

Considering that the Government of the United States of America has entrusted to the National Aeronautics and Space Administration (hereinafter referred to as "NASA") the development of the Space Shuttle;

Considering that the SL concept is essential for the full exploitation of the Space Shuttle potential;

Having noted the Memorandum of Understanding between NASA and ESRO drawn up for the purpose of implementing a cooperative programme concerning the development, procurement and use of an SL in conjunction with the Space Shuttle system;

Have agreed as follows:

ARTICLE 1 PURPOSE AND OBJECTIVES

The Government of the United States of America and the European Partners shall engage in a cooperative programme concerning an integrated space transportation and orbital system to provide:

- (1) for the design, development, manufacture and delivery of the first flight unit of the SL as an element to be integrated with the Space Shuttle;
- (2) for the use of the Space Shuttle and SL systems for peaceful purposes;
- (3) for the production and procurement of additional SLs;
- (4) for appropriate exchanges and interaction in the development and use of the Space Shuttle and SL systems; and
- (5) for consideration of the timely expansion and extension of this cooperation as their mutual interest warrants.

ARTICLE 2 GENERAL DESCRIPTION OF THE SPACE SHUTTLE AND SL PROGRAMMES

A. The Space Shuttle programme refers essentially: to the definition, design and development of a Space Shuttle which will: serve in missions to deliver payloads to earth orbit; maintain station on orbit for mission durations in the order of seven days or more; provide safety monitoring and control over payload elements throughout missions; and provide seating and complete habitability for crews, including free movement between the Shuttle and SL.

B. The SL programme provides for the definition, design, development and procurement of mannable laboratory modules and unpressurised instrument platforms (pallets) attached to and integral with the Shuttle and suitable for conducting research and applications activities on Shuttle sortie missions.

ARTICLE 3 COOPERATING AGENCIES AND IMPLEMENTATION

A. NASA is designated as the cooperating agency of the Government of the United States of America to implement its side of the cooperative programme. ESRO, or its successor organisation, is designated as the cooperating agency of the European Partners to implement their side of the cooperative programme.

B. Detailed provisions for the implementation of this cooperative programme are set forth in the Memorandum of Understanding between NASA and ESRO, dated 14 August 1973, confirmed herewith. Upon formation of a successor organisation to ESRO, the Memorandum of Understanding will be considered as being between NASA and that organisation.

ARTICLE 4 OBLIGATIONS OF THE EUROPEAN PARTNERS

As their part of the cooperative programme the European Partners shall have among their obligations the following:

- (1) to design, develop, manufacture and deliver an SL and associated equipment according to mutually agreed specifications and time schedule;
- (2) to establish the necessary means and infrastructure in Europe in order to ensure the possibility of the procurement at reasonable prices by the Government of the United States of America of additional such SLs, components and spares as the Government of the United States of America may need;
- (3) to ensure the availability of a sustaining engineering capability for the SL to meet the mission operating requirements of the Government of the United States of America; and
- (4) to provide for the necessary contingency arrangements to enable to production in the United States of SLs, components and spares in the event that the European Partners fail to complete the first SL or to produce subsequent SLs for procurement by the Government of the United States of America in accordance with agreed specifications and schedules at reasonable prices.

ARTICLE 5 OBLIGATIONS OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

As its part of the cooperative programme the Government of the United States of America shall have among its obligations the following:

- (1) to provide relevant information and advice;
- (2) to provide, subject to its availability and applicable United States laws and regulations, such assistance and for export of such technology, including know-how and hardware, as may be mutually agreed is required for the development and manufacture of the SL;
- (3) to procure only from the European Partners such additional SLs, components and spares as substantially duplicate the design and capabilities of the first SL, as are needed by the Government of the United States of America, including needs arising from its international programmes, and as are available in accordance with agreed schedules and at reasonable prices;
- (4) to refrain from separate and independent development of any SL substantially duplicating the design and capabilities of the first SL unless the European Partners fail to produce such SLs, components and spares in accordance with agreed specifications and schedules and at reasonable prices; (5) to use the first SL developed in Europe as an element integrated with the Space Shuttle system for the peaceful exploration and use of outer space; and
- (5) to keep the European Partners informed of its plans for future use of the Space Shuttle system, and, in particular, of future concepts which may lead to modifications of the present SL concept, with a view to expanding and extending this cooperation beyond the present Agreement.

ARTICLE 6 ACCESS TO TECHNOLOGY AND INFORMATION

A. The European Partners will have access to that technology, including know-how, which is available to the Government of the United States of America and is needed in order to accomplish successfully their tasks under this cooperative programme; for the

same purposes the Government of the United States of America will have access to technology, including know-how, available to the European Partners.

B. The technology, including know-how, which the Government of the United States of America and the European Partners will require from the other for the successful accomplishment of tasks under this cooperative programme will be jointly defined. However, the Government of the United States of America and the European Partners each reserve the right in exceptional cases to arrange for their respective technology so defined to be made available in the form of hardware, rather than know-how.

C. The technology, including know-how, so identified and transferred under this cooperative programme and normally subject to licensing and proprietary control will not be made available beyond the European Partners, their nationals and ESRO acting in their behalf in the SL programme without the express prior approval of the Government of the United States of America. If the European Partners, their nationals or ESRO wish to use this technology, including know-how, for purposes other than the development and production tasks under the cooperative programme and other than in connection with their use of the Space Shuttle and SL, such uses may be arranged on a case-by-case basis in accordance with normal commercial practice and the applicable United States laws and regulations.

D. The Government of the United States of America will give consideration on a case-by-case basis to requests for access to United States technology, including know-how, beyond that which is directly necessary for the execution of the SL programme.

E. Any technology, including know-how, transferred under this cooperative programme to the Government of the United States of America or its nationals by the European Partners will be subject to similar conditions as to availability and use.

F. The access to technology, including know-how, referred to above will be effected in such a way as not to infringe any existing proprietary rights of any person or body in the United States or Europe.

G. The Government of the United States of America will make available to the European Partners general information related to the design, development, and use of the Space Shuttle and orbital system, particularly that required for the understanding of that system.

H. In those cases where the information requested can be made readily available by agencies of the Government of the United States of America, it will be made available free of charge; in other cases, the Government of the United States of America will use its best efforts to facilitate its availability on favourable conditions.

I. While the Government of the United States of America and the European Partners believe that the SL can be developed within existing European capabilities, it is recognised that some commercial procurement of components and services in the United States is likely. In consideration thereof, the Government of the United States of America shall, in procurement of commercially available components and services related to the development of the Shuttle, follow the principle of giving full recognition to advantages offered in Europe in cost, quality or availability.

J. The provisions of this Article shall be subject to applicable laws and regulations.

ARTICLE 7 USE OF THE SPACE SHUTTLE AND SL

A. The Government of the United States of America shall, consistent with international agreements and arrangements, make the Space Shuttle available for SL missions (experiments and applications) of the European Partners and their nationals on either a cooperative or cost-reimbursable basis.

B. In regard to space missions of the European Partners, the Government of the United States of America shall provide access for use of SLs developed under this cooperative programme for experiments or applications proposed for reimbursable flight by the European Partners, in preference to those of third countries considering, in recognition of the participation of the European Partners in this cooperative programme, that this will be equitable in the event of payload limitation or scheduling conflicts. Experiments or applications proposed for cooperative flight will be selected on the basis of the merit of each proposal in accordance with continuing United States policy; such proposals of the European Partners will be given preference over the proposals of third countries provided their merit is at least equal to the merit of the proposals of third countries. The European Partners will have an opportunity to express their views with respect to the judgement of merit regarding their cooperative proposals.

C. The commercial use of Space Shuttles and SLs will be on a non-discriminatory basis. The establishment by the Government of the United States of America or by the

European Partners of standards and conditions for the commercial use of SL units will be the subject of prior exchange of views on such standards and conditions, looking toward the maximum practicable harmonisation of the respective policies. In exceptional circumstances, should this prove impossible, the exchange of views will take place at the first opportunity thereafter.

D. In order to assure the integrity of operation and management by the Government of the United States of America of the Space Shuttle system, this Government shall have full control over the first SL unit, after its delivery to the Government of the United States of America, including the right to make final determination as to its use for peaceful purposes. The Government of the United States of America may make any modifications to the first SL unit it desires. However, in the case of intended major modifications, the European Partners will be given advance notification to permit the opportunity for them to express their views and to provide modification kits.

E. With regard to the first flight of the first SL unit, the system test objectives will be the responsibility of the Government of the United States of America. The experimental objectives of this first flight will be jointly planned on a cooperative basis. Thereafter, the cooperative use of this first SL unit by the European Partners and ESRO will be encouraged throughout its useful life, although not to the exclusion of cost reimbursable use by them. The Government of the United States of America will otherwise have unrestricted use of the first SL unit free of cost.

F. The Government of the United States of America will provide SL flight crew opportunities to nationals of the European Partners in connection with their space missions involving an SL. It is contemplated that a European crew member will be included in the flight crew of the first SL flight.

G. The results of NASA and ESRO experiments on cooperative SL missions shall be made freely available to the Parties to this Agreement, subject to any proprietary rights and to the usual priorities to be granted to individual experimenters for the purpose of advance exploitation and publication of the data obtained.

H. The use of Space Shuttles and SLs by European nationals may be arranged through ESRO or by the appropriate European Partner.

ARTICLE 8 COSTS

A. The Government of the United States of America and the European Partners shall bear the costs of their respective participation in the cooperative programme under this Agreement.

B. Neither the Government of the United States of America nor the European Partners will seek to recover government research and development costs incurred in the development of items procured from the other in connection with this cooperative programme.

C. With respect to the financial conditions for reimbursable launch services from United States launch sites, European Partners, their nationals and ESRO will be charged on the same basis as comparable nongovernment United States domestic users.

D. The obligations of the Government of the United States of America and of the European Partners shall be subject to their respective funding procedures.

ARTICLE 9 CONSULTATION AND PLANNING

A. The Parties agree to consult with a view to facilitating a continuing and expanding cooperation in the use of outer space.

B. In order to enhance the opportunities for the European Partners to determine and express their interest in the planning and use of the Space Shuttle system, and particularly the SL, the Government of the United States of America will associate representatives of the European Partners, through consultation and as observers, with mission definition planning for use of the system as well as with planning and management of the overall development of the system.

C. The Government of the United States of America will consult with the European Partners on the appropriate measures to be taken in the event the Space Shuttle programme is not continued, and will, consistent with United States policy and the objectives of Articles 7 and 8, make available to the European Partners or ESRO existing alternative launchers for missions of the European Partners being developed for SL flights.

ARTICLE 10 MOVEMENT OF PERSONS AND MATERIALS

A. The Government of the United States of America and the European Partners shall facilitate the movement of persons and materials involved in the cooperative programme under this Agreement into and out of their territories.

B. The Government of the United States of America and the European Partners shall use their best efforts to accord, to such material as may be government-owned, entry free of customs duties and other charges.

C. The Government of the United States of America and the European Partners shall use their best efforts to accord to nongovernment-owned material: (1) entry free of customs duties and other charges; and (2) purchase free of national and other taxes.

ARTICLE 11 LIABILITY

A. The Government of the United States of America shall have full responsibility for damage to its nationals and to its governmental property arising in the course of implementation of this Agreement. The European Partners shall have full responsibility for damage to their nationals, to their governmental property, and, through ESRO, to employees of ESRO and to ESRO property, arising in the course of implementation of this Agreement.

B. In the event of damage, arising from the launch, flight or descent of the Shuttle carrying the SL, to nationals of countries which are not parties to this Agreement, for which damage there is joint liability of the Government of the United States of America and the European Partners under the principles of international law or of the Convention on International Liability for Damage Caused by Space Objects,[1] the Government of the United States of America and the European Partners agree to consult promptly on an equitable sharing of the payment for any settlement required. If agreement is not reached within 180 days, the Government of the United States of America and the European Partners will act promptly to arrange for early arbitration to settle the sharing of such claims following the 1958 model rules on arbitral procedure of the International Law Commission.

C. In the event of damage to nationals of countries not parties to this Agreement, arising from the implementation of this Agreement and not covered by Paragraph B above, such damage shall be the responsibility of the Government of the United States of America and/or the European Partners depending on where the responsibility falls under applicable law.

D. Notwithstanding Paragraph A above, with respect to the first SL to be provided by the European Partners, the Government of the United States of America shall be responsible for damage to such first SL after its acceptance by the Government of the United States of America, but shall not be liable for damage occurring in connection with a Space Shuttle launch, flight or descent.

ARTICLE 12 DISPUTES

The resolution of any dispute as to the implementation of the cooperative programme will be the responsibility of the agencies referred to in Article 3 of this Agreement. Only a dispute which, in the view of the Government of the United States of America or the European Partners, seriously and substantially prejudices the execution of the cooperative programme may be referred for resolution to a representative of the Government of the United States of America and to a representative of the European Partners. If these representatives are unable to resolve the dispute, it may be submitted for such arbitration as may be agreed.

ARTICLE 13 AMENDMENTS

The present Agreement may, on the initiative of the Government of the United States of America or of the European Partners, be amended by consent of the Parties. An amendment will enter into force when the Government of the United States of America and the European Partners have notified their approval to the depositary Government.

ARTICLE 14 ENTRY INTO FORCE AND DEPOSITARY

A. This Agreement shall be signed on August 14, 1973 by the Government of the United States of America and European Partners. The Agreement shall enter into force on this

date for the Government of the United States of America and those European Partners which sign not subject to ratification or approval.

B. The Agreement shall remain open for signature for European Partners, not signing on August 14, 1973, for the period from August 15, 1973 to September 24, 1973. The Agreement shall enter into force for a European Partner which signs the Agreement in this period not subject to ratification or approval, on the date of its signature.

C. For those European Partners which sign this Agreement subject to ratification or approval under Paragraph A or Paragraph B above, the Agreement shall have provisional application upon signature. The Agreement shall enter into force for such a European Partner on the date of the deposit of its instrument of ratification or approval with the depositary Government.

D. After September 24, 1973 participation in the cooperative programme may be effected only in accordance with the provisions of Article 15.

E. The Government of the French Republic shall be the depositary Government.

ARTICLE 15 ADHERENCE OF OTHER GOVERNMENT

A. With the consent of the Parties, and subject to such terms as may be agreed by the Parties, other governments may adhere to the present Agreement as European Partners. However, the consent of the Government of the United States of America is not required for the adherence of a present member Government of ESRO.

B. Adherence of a Government may be deposited after the appropriate Parties under Paragraph A above have notified the depositary Government of their consent and shall become effective on the date of deposit of the instrument of adherence.

ARTICLE 16 DURATION

This Agreement shall remain in force until January 1, 1985, but at least for five years from the date of the first flight of the SL. This Agreement shall be extended for three years unless either the Government of the United States of America or the European Partners give notice of termination prior to January 1, 1985 or prior to the expiration of

the five years, whichever is applicable. Thereafter, the Agreement shall be extended for such further periods as the Parties may agree.

ARTICLE 17 REGISTRATION

A. The depositary Government shall notify the signatories and adhering Governments of the signatures, ratifications or approvals and adherences.

B. The present Agreement shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United Nations.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in Neuilly-sur-Seine, this fourteenth day of August nineteen hundred and seventy-three, in the English, French and German languages, each version being equally authentic, in a single original which shall be deposited in the archives of the Government of the French Republic which shall transmit duly certified copies thereof to the Government of the signatory and adhering States.