



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

AGREEMENT

No. 35970/ESO/10/37788/ADE

For the design, construction and commissioning of the ESPRESSO Instrument on the VLT

BETWEEN

the **European Organisation for Astronomical Research in the Southern Hemisphere**, hereafter referred to as **ESO**, having its Headquarters at Karl-Schwarzschild-Straße 2, D-85748 Garching bei München (Germany), represented by its Director General Prof. Dr. Tim de Zeeuw,

on the one hand,

AND

the **ESPRESSO Consortium Members** hereafter collectively referred to as the **Consortium**, represented by the **University of Geneva**, hereinafter referred to as the **UNIVERSITY**, which acts in accordance with the provisions of the ESPRESSO Memorandum of Understanding (Annex 4) in their name and on their behalf, and which are:

- 1) **Centro de Astrofísica da Universidade do Porto**, Rua das Estrelas, 4150-762 Porto, Portugal,
- 2) **Faculdade de Ciências da Universidade de Lisboa**, Campo Grande, Building C5, 1749-016 Lisboa, Portugal,
- 3) **INAF - Osservatorio Astronomico di Trieste and Osservatorio Astronomico di Brera**, Viale del Parco Mellini n.84-00136 Roma, Italy,
- 4) **Instituto de Astrofísica de Canarias**, C/Via Láctea s/n, 38200 La Laguna, Tenerife, Spain,
- 5) **Physikalisches Institut der Universität Bern**, Sidlerstrasse 5, CH-3012 Bern, Switzerland,
- 6) **Université de Genève**, 24, rue du Général-Dufour, 1211 Geneva 4, Switzerland,

on the other hand.

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +4989 32008-0
Fax +4989 3202382
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2102002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

13



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 2/14

ESO and the Consortium Members (hereinafter individually referred to as a “party” and collectively as the “parties”) agree as follows:

ARTICLE 1. SCOPE OF THE AGREEMENT

ESO entrusts to the Consortium and the Consortium agrees to perform the

“Design, construction and commissioning of the ESPRESSO (Echelle SPectrograph for Rocky Exoplanet and Stable Spectroscopic Observation) Instrument on the VLT”

in accordance with the following documents, listed in the order of precedence, in deviation to the *General Conditions of ESO Contracts, Munich, December 2009*:

- 1.1 the Articles of the present Agreement;
- 1.2 the ESPRESSO Statement of Work, Doc. ref. VLT-SOW-ESO-13520-5059, Issue 1, dated 01.02.2011 (Annex 1);
- 1.3 the ESPRESSO Technical Specifications, Doc. ref. VLT-SPE-ESO-13520-4633, Issue 3, dated 01.02.2011 (Annex 2);
- 1.4 the *General Conditions of ESO Contracts, Munich, December 2009* (Annex 3);
- 1.5 the ESPRESSO Consortium Memorandum of Understanding dated 12.05.2011 (MoU, Annex 4).

The Consortium Members shall be jointly and severally responsible for the performance of the scope of the Agreement.

ESO role as “Associated Partner” to the Consortium is defined in the ESPRESSO Memorandum of Understanding.

ARTICLE 2. PRICE - PAYMENTS

- 2.1. This Agreement does not entail any payment from ESO to the Consortium and none of the Consortium Members may claim any payment from ESO under the Agreement.
- 2.2. A period of Guaranteed Time Observation (GTO) with the ESPRESSO Instrument installed at the VLT telescope will be granted by ESO to the Consortium Members in accordance with the provisions of Article 10, in return for the financial and manpower contributions of the Consortium Members for the performance of the scope of the Agreement.
- 2.3. There shall be no automatic increase of GTO or other kinds of reimbursement for the Consortium, should the actual FTEs and/or financial contribution exceed these values.

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +49 89 32006-0
Fax +49 89 32023 62
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2 102 002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

AJ



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 3/14

ARTICLE 3. ESO CONTRIBUTION UNDER THE AGREEMENT

- 3.1. ESO will provide the Consortium with deliverables and services as specified in the Statement of Work (Annex 1).
- 3.2. The deliverables provided by ESO shall remain the property of ESO and shall be used solely for the execution of the Agreement and for no other purpose, unless ESO prior approval in writing has been given.

ARTICLE 4. ESO ROLE AS ASSOCIATED PARTNER UNDER THE ESPRESSO MOU

ESO will provide the Consortium with deliverables and services up to a value of 3,873,000 EUR and the associated required manpower of up to 15 FTEs (Full Time Equivalent).

ARTICLE 5. FINANCIAL CONTRIBUTION OF THE CONSORTIUM

The ESPRESSO Consortium contribution under the Agreement shall be up to a value of 8,903,000 EUR and the associated required manpower of up to 110,25 FTEs.

ARTICLE 6. SCHEDULE

The activities to be performed under the Agreement shall start at Tp (as defined in the table below) and shall be completed within 70 months, in accordance with the following key milestones:

Phases – Key milestones	Due time
Milestone 0: Start of the Project	Tp = 01 February 2011
Preliminary Design Phase Milestone 1: Preliminary Design Review	Tp + 8 months
Final Design Phase Milestone 2: Advanced Final Design Review (AFDR) Milestone 3: Final Design Review (FDR)	Tp + 17 months Tp + 26 months
Subsystems Manufacture, Assembly, Integration and Test Phase Milestone 4: ESPRESSO Instrument Preliminary Acceptance Europe (PAE)	Tp + 56 months
Installation & Commissioning Phase Milestone 5: ESPRESSO Instrument Provisional Acceptance Chile (PAC)	Tp + 70 months

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +4989 32006-0
Fax +4989 32023 62
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2 102 002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

AB



European Organisation
for Astronomical
Research In the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 4/14

Transport and insurance of the ESPRESSO Instrument and related items (including all special handling devices and tools) from the Consortium's premises to Paranal shall be under the Consortium's responsibility and at Consortium's cost (i.e. delivery DAP ESO premises in Paranal, Incoterms® 2010).

ARTICLE 7. PROVISIONAL ACCEPTANCE

The provisions of paragraph 15 of the *General Conditions of ESO Contracts, Munich, December 2009* are complemented as follows:

- 7.1. Provisional Acceptance shall be granted by ESO after all deliverables as specified in the Statement of Work have been reviewed and accepted by ESO and all requirements of the Agreement have been fulfilled, i.e. upon Provisional Acceptance Chile (Milestone 5 as defined in Article 6). To that effect, the Principal Investigator shall submit to ESO a Request for Provisional Acceptance, using the template provided as Annex 5 (Form 1) to the Agreement.
- 7.2. Provisional Acceptance shall take place at ESO's premises in Paranal (Chile).
A Certificate of Provisional Acceptance (see Form 2 provided in Annex 5) shall be drawn up by ESO and shall be provided to the Principal Investigator.
- 7.3. All Consortium deliverables (including the ESPRESSO Instrument and all its constitutive parts, materials and equipment) specified in the Agreement shall become the property of ESO upon the granting of Provisional Acceptance.

ARTICLE 8. FINAL ACCEPTANCE

The provisions of paragraph 17.1 of the *General Conditions of ESO Contracts, Munich, December 2009* are amended as follows:

Final Acceptance shall be granted with effect from the expiry of the Guarantee Period, provided that the Consortium has fulfilled all its obligations for this purpose. To that effect, the Principal Investigator shall submit to ESO a Request for Final Acceptance, using the template provided as Annex 5 (Form 3).

A copy of the Certificate of Final Acceptance, using the template provided as Annex 5 (Form 4), shall be provided to the Principal Investigator.

ARTICLE 9. GUARANTEE

- 9.1. The Guarantee Period shall be two years from the date of Provisional Acceptance.
- 9.2. Paragraph 16.2 of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

The Consortium shall be responsible for all repairs, adjustments and/or modifications of the delivered ESPRESSO Instrument during the Guarantee Period, which are necessary in order to comply with the specified technical

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +4989 32006-0
Fax +49 89 32023 62
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2102002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 5/14

requirements. The Consortium shall replace the components which failed during normal operation or need to be replaced due to modification.

However, subject to prior authorization given by the Consortium, ESO personnel may carry out minor repairs, adjustments and/or modifications where ESO considers that it is in a position to efficiently perform them (e.g. if the necessary parts are available in Paranal and adequate and precise instructions are provided by the Consortium). In such a case the responsibility will not be shifted from the Consortium to ESO.

If the Consortium fails to comply with its Guarantee obligations, ESO may, after serving due notice, take the necessary action in the Consortium's stead and at its expense.

9.3. Paragraph 16.6 of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

In any of the cases where the Consortium has to carry out the repair, adjustment and/or modification, ESO will organize and bear the cost of:

- the transportation within Chile, between Santiago and Paranal and
- the board and lodging in ESO premises in Chile,

of the relevant Consortium Members' personnel.

The Consortium shall not be responsible for costs resulting from deterioration attributable to ESO by reason of negligence, inadequate supervision or maintenance, or mishandling.

Except as provided for in the last paragraph of the above Article 9.2, the Consortium shall not be held liable if components have been replaced, modified or repaired by ESO without the Consortium's written consent.

ARTICLE 10. GUARANTEED TIME OBSERVATION

A period of Guaranteed Time Observation (GTO) totalling 273 1-UT (Unit Telescope) nights in Visitor Mode with the ESPRESSO Instrument will be granted by ESO to the Consortium after Commissioning of the instrument. One 4-UT night counts as 4 separate 1-UT nights. The principles for the distribution of GTO among the Consortium Members are laid down in the ESPRESSO Memorandum of Understanding.

The first 30 GTO nights after commissioning will be scheduled in Visitor mode. Up to 50% of the subsequent GTO nights may be requested in Service mode. One Service mode night will be valued as being equivalent to 1.2 Visitor Mode nights.

The GTO has been calculated according to the guidelines laid down in ESO/Cou619-rev2 ("Cooperations with External Institutions") dated 20 April 1998 and subject to the provisions specified in ESO/STC-361 rev., and in the document VLT/VLTI Science Operations Policy (ESO/Cou-996). In addition, this Agreement has been prepared to be consistent with ESO Council document ESO/Cou-1301 (Council June 2010) and requires that:

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +49 89 32006-0
Fax +49 89 32023 62
www.eso.org
ESO is member of the EPOforum

Commerzbank München, Account No. 2 102 002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

AD



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 6/14

- the GTO program shall be submitted by the Consortium for ESO Observing Programmes Committee (OPC) approval in due time;
- GTO proposals given OPC grades larger (worse) than 3.0 will in general not be scheduled. In this case, the GTO time is not lost if not scheduled and ownership remains with the GTO team. The ESO Director General can overrule the OPC grade, if deemed necessary or appropriate.

ESO will make every attempt to schedule all the GTO within the first 4 years of operation.

The proprietary period for GTO will apply from the date the data is taken until:

- one year after each data set is taken, for 50 of the GTO nights. This is the conventional VLT proprietary period;
- one year after completion of all GTO, for 223 of the GTO nights. This is to allow completion of the long-term project "Search and Characterisation of rocky planets in the habitable zone". The Consortium undertakes to release individual spectra before the end of the proprietary period, in the format provided by the online pipeline, for the use by research projects unrelated to the Consortium's GTO programme.

ARTICLE 11. PENALTIES

The provisions of paragraph 29 of the *General Conditions of ESO Contracts, Munich, December 2009*, are replaced by the following:

- 11.1. In case of delay attributable to the Consortium in the date of the Provisional Acceptance beyond that given in Article 6, the GTO mentioned in Article 10 shall be reduced by 1 (one) night for each month of delay for the first 6 months and 3 (three) nights per month of delay thereafter.
- 11.2. The GTO may also be reduced in the case that the technical performance of the ESPRESSO Instrument is not compliant with the requirements as stated in the Technical Specification whilst ESO is not responsible for the non-compliant performance.

ARTICLE 12. INTELLECTUAL PROPERTY

The provisions of Chapter VI (Intellectual Property Rights) of the *General Conditions of ESO Contracts, Munich, December 2009* are complemented as follows:

- 12.1. ESO has the irrevocable and unrestricted right, free of any charge, to use the results of the Agreement for any further design and implementation of any ESO instrumentation. Furthermore, ESO has the right to distribute the ESPRESSO pipeline and data analysis software under open license, in accordance with section 4.6.2 of the VLT-SPE-ESO-19000-1618.
- 12.2. If any derivative works of the ESPRESSO pipeline and data analysis software to be delivered under the Agreement is developed by the Consortium Members, it shall be

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +49 89 32006-0
Fax +49 89 32023 62
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2102002
BLZ 700 400 41
SWIFT-Code COBADE33
IBAN DE09 7004 0041 0210 2002 00

43



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 7/14

offered to ESO free of charge for use under similar conditions as described in Article 12.1. This rule applies during the Guarantee Period of the ESPRESSO Instrument.

- 12.3. The Consortium will not be responsible for any misuse/abuse/violation of the published pipeline and data analysis software licensing conditions by third parties and will not be responsible for user support and maintenance of the pipeline and data analysis software published by ESO or any third party.
- 12.4. Notwithstanding the transfer of ownership of the Instrument to ESO, the Consortium Members retain the rights of use and exploitation of the scientific and commercial results of the project, including the right to claim patents for inventions or to protect other exclusive rights and to publish scientific results.
- 12.5. The contents and authorship of any written or verbal communication concerning technical aspects of the ESPRESSO Instrument shall be agreed in advance by the Principal Investigator (see Article 17.2), in the name and on behalf of the Consortium, and ESO. This procedure shall be applied for the period starting with the signature date of the Agreement until one year after the Provisional Acceptance of the ESPRESSO Instrument.
- 12.6. Paragraph 23.1 of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

The parties to the Agreement are encouraged to make publicly available the results of their research. Before either party submits a paper or abstract for publication or otherwise intends to publicly disclose information about confidential or proprietary/patentable matter, the other party shall be provided 10 days to review the proposed publication or disclosure to assure that proprietary/confidential information is protected.

The publication or other disclosure shall be delayed for up to 90 additional days upon written request by any party as necessary to preserve patent or other intellectual property right. If any objection with regard to the value of confidentiality or other commercial interests is raised by any party against a project-related publication, the parties will make all efforts to find a mutually acceptable solution within three months after the objection was raised, by making appropriate text modifications in the document.

- 12.7. Paragraph 23.2a of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

The Consortium agrees and accepts that ESO will have an irrevocable and unrestricted right, free of any charge, to use and copy any information supplied by the Consortium in satisfaction of the requirements of the Agreement, with due respect to the existence of any intellectual property right therein.

ESO may disclose the information to third parties solely for the purpose of the management of the Agreement where ESO does not have the internal capability to do so, subject to non disclosure agreement(s) to be signed by the recipient(s) of the information.



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 8/14

Subject to prior written agreement by the Principal Investigator, ESO is entitled to transfer the data to universities and similar scientific institutes working in the same field as ESO in the Member States of the Organisation.

ESO and the above-mentioned universities and similar scientific institutes have the right, for their own requirements in the field of scientific research and its application to:

- use the data in question free of charge;
- allow the data in question to be used, free of charge, by third parties for these purposes.

12.8. Paragraph 23.2b of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

The same applies to information identified to be of a proprietary nature; such information may, however, only be disseminated in any of the following cases:

- if ESO has received the approval by the Consortium to do so;
- if required to achieve the purpose of the Agreement;
- if required for integration, testing, operation or maintenance of equipment studied or developed under the Agreement, also if performed by different contractors under separate ESO contracts;
- in order to exercise any reproduction right provided for in the Agreement.

When disseminating the data ESO will ensure that they are used only for its own purposes and that third parties do not disseminate them without securing written undertakings in advance that the data will be protected against any unauthorised use or further dissemination.

12.9. Paragraph 24 of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

The Consortium Members and ESO shall indemnify each other and hold each other harmless against any claim for infringement of intellectual property or patent rights, known and published in any of the ESO Member States or registered by the European Patent Office at the date of signature of the Agreement, by the transfer or use of any equipment or component supplied by each party to the other. Each party shall be liable for all the consequences, in particular legal and financial, of the exercise of its rights by the other party, and shall guarantee the other party against any claim, except if the party has acted on formal instructions given by the other party.

12.10. Paragraph 26 of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

The Consortium may, in accordance with conditions to be defined by mutual agreement, offer to ESO the possibility of application to the contract being performed of developments, whether patentable or not, which may arise during the performance of the Agreement, even if the developments have no connection with the said Agreement. The Principal Investigator shall inform ESO of any such development.

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +49 89 32006-0
Fax +49 89 32023 82
www.eso.org
ESO is member of the EPOforum

Commerzbank München, Account No. 2 102 002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

4



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 9/14

12.11. Paragraph 27.1 of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

A patent application by any Consortium Member in respect of an invention resulting from work performed or from documents, instructions or data obtained in any manner whatsoever as a result of the Agreement shall be subject to prior agreement between ESO and the Consortium, whereby the Consortium shall, in particular, undertake to grant to ESO for the purpose of scientific research an irrevocable free licence, which ESO may make available to the suppliers engaged in work for ESO own requirements.

With the approval and under conditions to be agreed upon with the Consortium, such licence shall be transferable to universities and to similar scientific institutes working in the same field as ESO in the Member States of the Organisation.

ESO and the Consortium shall not withhold their agreement unreasonably, and shall act with due diligence in notifying their decision. In these cases ESO shall inform the patent owner of this transfer.

ARTICLE 13. CANCELLATION OF THE AGREEMENT

Paragraph 30.2 of the *General Conditions of ESO Contracts, Munich, December 2009* is amended as follows:

Both ESO and the Consortium may unilaterally cancel the Agreement for important and justified reasons. Such cancellation, however, shall only be acceptable if no amendment to the Agreement could be reached by negotiation between the parties within a period of three months after the date on which the reason for the cancellation has come to the attention of the cancelling party.

Missing any of the key milestones as specified in Article 6 by a significant period shall be considered as an important and justified reason for ESO to immediately cancel the Agreement without any prior negotiations required.

ARTICLE 14. LIABILITY - INSURANCE

14.1. Paragraph 32.2 of the *General Conditions of ESO Contracts, Munich, December 2009* is replaced by the following:

Each party shall bear the financial consequences of any material damage or personal injuries which, through its action, may be suffered by itself, its agents, another party or its agents, or any third party during the performance of the Agreement, either on the ESO site or outside it.

14.2. Paragraph 32.4 of the *General Conditions of ESO Contracts, Munich, December 2009* is replaced by the following:

In matters concerning the Agreement, the Consortium's liability shall be restricted to the highest of the following:

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +4989 32006-0
Fax +4989 32023 82
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2 102 002
BLZ 700 400 41
SWIFT-Code CCBADEFF700
IBAN DE09 7004 0041 0210 2002 00

49



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 10/14

- 3,698,000 EUR (three millions six hundred ninety-eight thousand euros),
- the insured amount pursuant to the relevant Consortium Members' applicable insurance,

except for liability resulting from gross negligence and wilful misconduct, which shall not be limited.

- 14.3. In matters concerning the Agreement, ESO's liability shall be restricted to 3,698,000 EUR (three millions six hundred ninety-eight thousand euros), except for liability resulting from gross negligence and wilful misconduct, which shall not be limited.
- 14.4. In complement to the provisions of paragraph 32.5 of the *General Conditions of ESO Contracts, Munich, December 2009* the Principal Investigator shall provide ESO with evidence of the insurance cover for third party liability risks within 3 months after the Agreement signature.
- 14.5. Between delivery of the ESPRESSO Instrument to ESO premises in Paranal and the Provisional Acceptance the Instrument will be covered by the applicable ESO Paranal All-Risk Insurance, at ESO' cost. The declared value of the Instrument shall be agreed upon between ESO and the Consortium Principal Investigator within one month after Preliminary Acceptance Europe.

Should such agreement not be reached, the declared value of the Instrument shall be defined by ESO on the basis of the hardware value as estimated by ESO and the Consortium Principal Investigator.

ARTICLE 15. IMPORT & EXPORT - CONSTITUTION OF THE AGREEMENT

- 15.1. In accordance with Article 8 of the *Multilateral Protocol on the Privileges and Immunities of the European Organization for Astronomical Research in the Southern Hemisphere* and according to Article IV of the *Agreement between the Government of Chile and ESO for the Purpose of Establishing an Astronomical Observatory in Chile*, with reference to section 10 of the Contract between Chile and CEPAL, goods and materials intended for use in connection with the official activities of ESO, whether imported or exported by ESO, shall be exempt from all prohibitions and restrictions on import or export.
- 15.2. It shall be the responsibility of the relevant Consortium Member(s) to obtain from the relevant authorities(s) in a timely manner any required export licence for any restricted material for the use of ESO on ESO's premises in Chile.
- 15.3. In addition to the provisions of paragraph 5 of the *General Conditions of ESO Contracts, Munich, December 2009*, the Agreement shall be deemed to be constituted only after the relevant Consortium Member(s) have been granted such export license(s).

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +4989 32006-0
Fax +4989 32023 62
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2 102 002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

MJ



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 11/14

ARTICLE 16. CONSORTIUM MEMORANDUM OF UNDERSTANDING

The ESPRESSO Memorandum of Understanding concluded among all the ESPRESSO Consortium Members and ESO as associated partner defines their rights and obligations during the execution of the Agreement.

A copy of this Memorandum of Understanding is attached as Annex 4.

ARTICLE 17. MANAGEMENT OF THE AGREEMENT, REPRESENTATION AND ADDRESSES FOR CORRESPONDENCE

In accordance with paragraphs 6 and 7 of the *General Conditions of ESO Contracts, Munich, December 2009*, the accredited representatives for the duration of the Agreement are:

17.1. FOR ESO:

Project Responsible (Managerial, Scientific and Technical Matters):

Dr. Luca Pasquini

European Organisation for Astronomical Research in the Southern Hemisphere, ESO
Karl-Schwarzschild-Strasse 2

D-85748 Garching bei München, Germany

Phone: +49.89.32.00.6792 - Fax: +49.89.32.00.6530

E-mail: lpasquin@eso.org

Contractual Matters

Alain Delorme

ESO, as above

Phone: +49.89.32.00.6953 - Fax: +49.89.32.00.6456

E-mail: adelorme@eso.org

17.2. FOR THE CONSORTIUM:

Principal Investigator:

Dr. Francesco Pepe

Observatory of the Geneva University

Ch. Des Maillettes 51, CH-1290 Versoix

Phone: +41.22.379.23.96 - Fax: +41.22.379.23.96

E-mail: francesco.pepe@unige.ch

The Principal Investigator shall act in the name and on behalf of the Consortium and any document sent and/or signed by him under the Agreement shall bind all the Consortium Members.

A change of the Principal Investigator may occur in accordance with the conditions of

AM



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 12/14

paragraph 6 of the *General Conditions of ESO Contracts, Munich, December 2009*.

A change of any of the above ESO accredited representatives may also occur during the Agreement duration. In such a case ESO shall inform the Consortium Principal Investigator accordingly. The Agreement will not need to be amended.

ARTICLE 18. LANGUAGE

Any communication and correspondence between ESO and the Consortium shall be in the English language.

ARTICLE 19. GENERAL CONDITIONS OF ESO CONTRACTS

- 19.1. Except if and in so far they have been modified under the above Articles, the *General Conditions of ESO Contracts, Munich, December 2009* shall apply to the Agreement.
- 19.2. Wherever in any of the documents mentioned in Articles 1.2 to 1.5 above the terms "Contract" and "Contractor" are used, those shall be understood respectively as "Agreement" and "Consortium Members" under the present Agreement.

ARTICLE 20. DISPUTES

In case of dispute arising from the Agreement, the parties agree to enter into negotiations with the aim of reaching an amicable settlement.

Failing such an amicable settlement, the parties shall resort to arbitration in accordance with the provisions of paragraph 33 of the *General Conditions of ESO Contracts, Munich, December 2009*.

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +49 89 32006-0
Fax +49 89 320 23 02
www.eso.org
ESO is member of the EIROforum

Commerzbank München, Account No. 2 102 002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

AS



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 13/14

LIST OF ATTACHMENTS:

- ANNEX 1: ESPRESSO Statement of Work, Doc. ref. VLT-SOW-ESO-13520-5059, Issue 1, dated 01.02.2011;
- ANNEX 2: ESPRESSO Technical Specifications, Doc. ref. VLT-SPE-ESO-13520-4633, Issue 3, dated 01.02.2011;
- ANNEX 3: *General Conditions of ESO Contracts, Munich, December 2009;*
- ANNEX 4: *ESPRESSO Memorandum of Understanding, 12.05.2011;*
- ANNEX 5: *Forms:*
- *Form 1: Request for Provisional Acceptance,*
 - *Form 2: Certificate of Provisional Acceptance,*
 - *Form 3: Request for Final Acceptance,*
 - *Form 4: Certificate of Final Acceptance.*



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Agreement No. 35970/ESO/10/37788/ADE between ESPRESSO Consortium and ESO Page 14/14

Done in two originals.

Done at Garching, on 9 August 2011

European Organisation for Astronomical Research in the Southern Hemisphere – ESO:

Tim de Zeeuw

Prof. Dr. Tim de Zeeuw,
Director General ESO



Done at Geneva, on 12/8/2011

for the UNIVERSITY, in the name and on behalf of the ESPRESSO Consortium Members:

Guillemette Bolens

Prof. Guillemette Bolens, vice-rector

Francesco Pepe

Dr. Francesco Pepe, Principal Investigator of the ESPRESSO Consortium

ESO Headquarters
Karl-Schwarzschild-Straße 2
85748 Garching bei München
Germany

Phone +49 89 32006-0
Fax +49 89 32023 62
www.eso.org
ESO is member of the EROforum

Commerzbank München, Account No. 2102002
BLZ 700 400 41
SWIFT-Code COBADEFF700
IBAN DE09 7004 0041 0210 2002 00

41