

DRAFT

SERVICE CONTRACT

14.CAT.OP.029

“Finalization of e-learning Standard Operating Procedures (SOP) Application Demonstrator(eSOPAD)”

The European Defence Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by Rini Goos, Deputy Chief Executive, with offices at Rue des Drapiers 17-23, B-1050 Brussels, Belgium,

of the one part,

and

[official name in full]
[official legal form]¹
[statutory registration number]²
[official address in full]
[VAT registration number]

(hereinafter referred to as "the Contractor"³), [represented for the purposes of the signature of this contract by [name in full and function,]]⁴

of the other part,

hereinafter collectively referred to as "the contracting parties" or "the parties",

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following Annexes:

-
- ¹ Delete if contractor is a natural person or a body governed by public law.
² Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.
³ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this contract".
⁴ In the case of consortia, each consortium member should be identified.

- Annex I –** Tender Specifications (Invitation to Tender No [complete] of [complete])
- Annex II –** Contractor's Tender (No [complete] of [complete])
- Annex III –** Security Aspects Letter

which form an integral part of this contract (hereinafter referred to as "the Contract").

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions and in the Security Aspects Letter (Annex III) shall take precedence over those in the other Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1. The subject of the Contract is the finalization of e-learning Standard Operating Procedures (SOP) Application Demonstrator(eSOPAD)
- I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications and technical proposal annexed to the Contract (Annexes I and II).

ARTICLE I.2 - DURATION

- I.2.1. The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3. The duration of the tasks shall not exceed 12 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.
- I.2.4. The contract may be renewed up to 3 times, each time for a period of execution of maximum 12 months, only three months before payment of the balance and with the express written agreement of the parties, indicating the date on which execution of the tasks shall start. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1. The maximum total amount to be paid by the Agency under the Contract shall be EUR [amount in figures and in words] covering all tasks executed for the duration specified under I.2.3 above.
- I.3.2. The total amount referred to in the above paragraph shall be fixed and not subject to revision throughout the whole duration of the contract, including renewals.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

- I.4.1. Pre-financing: N/A
- I.4.2. Interim payment: N/A
- I.4.3. Payment of the balance:

The request for payment of the balance of the Contractor shall be admissible if accompanied by

- the Final Report in accordance with the instructions laid down in Annex I
- a copy of the relevant acceptance certificate
- the relevant invoices

provided the report has been approved by the Agency.

The Agency shall have twenty days from receipt to approve or reject the report, and the Contractor shall have twenty days in which to submit additional information or a new report.

Within thirty days of the date on which an admissible payment request is received by the Agency, payment of the balance corresponding to EUR [complete amount in figures and in words] equal to 100 % of the total amount referred to in Article I.3.1 shall be made.

Prices shall be set taking into account that the European Defence Agency is exempt from custom duties, indirect taxes and sales taxes, in particular from value-added tax (VAT). For intra-EU purchases, the contractor shall mention in the invoice(s): "VAT Exemption/European Union/Article 151 of Council Directive 2006/112/EC".

Where VAT is due in Belgium, the contractor must include the following statement in the invoice(s): "*Commande destinée à l'usage officiel de l'Union Européenne, Exemption de la TVA; article 42 § 3, alinéa 1er 3°, du code de la TVA. Décision ministérielle ET 121.600/A3/LAS du 18 décembre 2012*" or an equivalent statement in the Dutch or German language.

The means by which the Agency manifests its approval for final invoicing and payment purposes shall be the signature and submission to the Contractor of an acceptance certificate.

I.4.4. Performance guarantee: N/A

I.4.5. Submission of invoices:

Invoices shall be addressed to:

European Defence Agency
Finance Unit
Rue des Drapiers 17-23
B-1050 Brussels

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in Euro, identified as follows:

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
[IBAN⁵ code: [complete]]

⁵ BIC or SWIFT code for countries with no IBAN code.

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number.

Communications shall be sent to the following addresses:

Agency:

European Defence Agency
Contracting Unit
Rue des Drapiers 17-23
B-1050 Brussels

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by European Union law, complemented, where necessary, by the national substantive law of Belgium.

I.7.2. Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Agency acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving sixty days' formal prior notice. Should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE I.10 – SECURITY

The Contractor recognises that the Agency is subject to the Council's security rules set out in Decision 2013/488/EU.

- I.10.1.** The Contractor shall - under penalty of termination of the Contract - comply with any security requirements prescribed by the Agency as detailed in the Security Aspects Letter attached to the Contract and any amendment or supplement thereto.
- I.10.2.** The Contractor shall ensure that the security requirements are complied with by any sub-contractors, where appropriate.
- I.10.3.** If there are changes of security requirements emerging during the performance of the Contract and such changes are of such nature that they significantly deviate from the initial arrangements the contract shall be amended accordingly or terminated, as appropriate.
- I.10.4.** Where changes of security requirements result in additional security measures to be taken or investments to be made by the Contractor, a contract amendment shall be negotiated on a fair and reasonable basis.
- I.10.5.** In case the Contractor cannot comply with increased security requirements, the contract shall be terminated. However, any contract termination resulting from changes of security requirements shall not be by default of the Contractor, and the Contractor shall be entitled to a fair compensation.
- I.10.6.** Should the Contract or the Specifications require one or more of Contractor's employees, directors, agents, representatives or subcontractors (to the extent authorised), to have a valid security clearance in force, the Contractor shall not start or authorise the commencement of the tasks under the Contract before such persons have such a security clearance in force. The Contractor shall forthwith inform the Agency (attn : Security Officer) (i) that the persons involved in the performance of the Contract who need a security clearance have obtained it, together with a copy thereof; (ii) if the security clearance of persons involved in the performance of the Contract has been withdrawn or suspended whereupon the Contractor shall immediately withdraw such person from the team working on the Contract. The Contractor shall as soon as possible inform the Agency of the measures it intends to take in order to guarantee continuous performance of the Contract, in particular replacing the person(s) by (a) person(s) fulfilling the same requirements as specified in the Contract.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to them.
- II.1.5.** The Contractor shall neither represent the Agency nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Agency;
 - the Agency may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Agency any right arising from the contractual relationship between the Agency and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Agency premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Agency shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Agency. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

- II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Agency may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Agency may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

- II.2.1.** The Agency shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Agency.
- II.2.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Agency shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Agency by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the Agency in connection with performance of the Contract, the Contractor shall assist the Agency. Expenditure incurred by the Contractor to this end may be borne by the Agency.
- II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Agency should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

- II.3.1.** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Agency in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Agency reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Agency, any member of his staff exposed to such a situation.

- II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.
- II.3.3.** The Contractor declares:
- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
 - that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption,

either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

- II.3.4.** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Agency should it so request.

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

Where required by Article I.4.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Agency at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Agency to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Agency shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment:

At the end of each of the periods indicated in Annex I, upon receipt of the relevant acceptance certificate, the Contractor shall submit to the Agency a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7;
- a copy of the relevant acceptance certificate.

If the report is a condition for payment, on receipt the Agency shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Agency does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Agency requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. Payment of the balance:

Within sixty days of completion of the tasks referred to in Annex I, upon receipt of the relevant acceptance certificate, the Contractor shall submit to the Agency a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7;
- a copy of the relevant acceptance certificate.

If the report is a condition for payment, on receipt the Agency shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Agency does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Agency requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.5.1. Payments shall be deemed to have been made on the date on which the Agency's account is debited.

II.5.2. The payment periods referred to in Article I.4 may be suspended by the Agency at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Agency may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Agency shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.5.3. In the event of late payment the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*"the reference rate"*) plus seven percentage points (*"the margin"*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Agency may not be deemed to constitute late payment.

ARTICLE II.6 – RECOVERY

- II.6.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Agency.
- II.6.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.6.3** In the event of failure to pay by the deadline specified in the request for reimbursement, the Agency may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Agency that is certain, of a fixed amount and due. The Agency may also claim against the guarantee, where provided for.

ARTICLE II.7 - REIMBURSEMENTS

- II.7.1.** Where provided by the Special Conditions or by Annex I, the Agency shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3.** Travel expenses shall be reimbursed as follows:
- a)** travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
 - b)** travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
 - c)** travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
 - d)** travel outside Community territory shall be reimbursed under the general conditions stated above provided the Agency has given its prior written agreement.
- II.7.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:
- a)** for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
 - b)** daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
 - c)** daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
 - d)** daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

- II.7.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Agency has given prior written authorisation.

ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned by the Agency, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9 – CONFIDENTIALITY

- II.9.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.
- II.9.2.** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 – DATA PROTECTION

- II.10.1** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.
- II.10.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- II.10.3** Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- II.10.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.
- II.10.5** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) unauthorised use of data-processing systems by means of data transmission facilities;
 - b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
 - c) record which personal data have been communicated, when and to whom;
 - d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
 - e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

- f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.11 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

- II.11.1.** The Contractor shall authorise the Agency to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.
- II.11.2.** Unless otherwise provided by the Special Conditions, the Agency shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Agency.
- II.11.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Agency and shall mention the amount paid by the Agency. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency's official position.
- II.11.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Agency has specifically given prior written authorisation to the contrary.

ARTICLE II. 12 – TAXATION

- II.12.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.12.2.** The Contractor recognises that the Agency has been granted exemption from taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.12.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.12.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.13 – FORCE MAJEURE

- II.13.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

- II.13.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.13.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.13.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.14 – SUBCONTRACTING

- II.14.1.** The Contractor shall not subcontract without prior written authorisation from the Agency nor cause the Contract to be performed in fact by third parties.
- II.14.2.** Even where the Agency authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Agency under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.14.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Agency is entitled by virtue of the Contract, notably Article II.18.

ARTICLE II.15 – ASSIGNMENT

- II.15.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Agency.
- II.15.2.** In the absence of the authorisation referred to in Article II.15.1, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Agency.

ARTICLE II.16 – TERMINATION BY THE AGENCY

- II.16.1.** The Agency may terminate the Contract in the following circumstances:
- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
 - (c) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
 - (d) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

- (e) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Agency's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Agency;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.16.2. In case of force majeure, notified in accordance with Article II.13, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.16.3. Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.16.4. Consequences of termination:

In the event of the Agency terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Agency may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Agency may engage any other contractor to complete the services. The Agency shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.16a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Agency may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities of fraud.

ARTICLE II.17 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Agency's right to terminate the Contract, the Agency may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Agency within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Agency and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.18 – CHECKS AND AUDITS

- II.18.1.** Pursuant to Article 43 of Council Decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency, the College of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the Agency's budget from signature of the Contract up to five years after payment of the balance.
- II.18.2.** The Agency or an outside body of its choice shall have the same rights as the College of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.

ARTICLE II.19 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.20 – SUSPENSION OF THE CONTRACT

Without prejudice to the Agency's right to terminate the Contract, the Agency may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Agency may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,

[*Company name/forename/surname/function*]

For the Agency,

Rini Goos,
Deputy Chief Executive

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

ANNEX I

TENDER SPECIFICATIONS

ANNEX II

CONTRACTOR'S TENDER

ANNEX III

SECURITY ASPECTS LETTER (SAL)

CONTRACT.: 14.CAT.OP.029

This contract may require or involve your company accessing European Union participating Member States (EU pMS)' national classified information or creating European Union classified information or material (EUCI) up to the level of **RESTREINT UE/EU RESTRICTED**. It is a condition of this contract that this information or material is appropriately protected. The level of protection required varies in accordance with the level of classification. To assist you in providing the appropriate degree of protection to classified information or material, this letter and its appendices identify the security requirements (Appendix I) and those elements of the contract requiring security protection (Appendix II).

Non-compliance with these requirements and the related security classification guide (SCG) may constitute sufficient grounds for the contract to be terminated.

The SCG, which was provided in the call for tender and can be found in Appendix II to this letter determines the security classification of any information provided or granted to you, as well as the security classification of any information to be created by your company for the performance of the contract. The SCG is part of the SAL but is laid-out as a separate document since it may vary throughout the life of the contract.

You are requested to bring this letter to the attention of your Facility Security Officer appointed for the performance of this contract, that they are fully understood and they can and will be respected so to safeguard the information and material concerned.

If you have any difficulty in interpreting the meaning of the above aspects or in complying with the security requirements laid down in this letter, please contact EDA immediately.

A copy of this letter will be sent to the National Security Authority (NSA)/ Designated Security Authority (DSA) of the country where your company is registered, and to your Facility Security Officer.

APPENDIX I
SECURITY REQUIREMENTS

GENERAL CONDITIONS

1. This letter is an integral part of the classified contract [or subcontract] and describes contract-specific requirements. Non-compliance with the basic principles and minimum standards of security laid down in the Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU) and these requirements may constitute sufficient grounds for the contract to be terminated.
2. Classified information generated by the contractor or subcontractor for the performance of this contract will require EU classification marking as determined in the Security Classification Guide (SCG) in Appendix II to this letter.
3. Regarding EU classified information (EUCI) created and handled by the contractor or subcontractor, the rights incumbent to the originator are exercised by EDA, as the contracting authority.
4. The contractor or subcontractor shall not make use of any information or material furnished by the contracting authority or produced on behalf of the contracting authority other than for the purpose of the contract.
5. The contractor or subcontractor shall investigate all cases in which it is known or there is reason to suspect that EU classified information provided or generated pursuant to this contract has been lost or disclosed to unauthorised persons. The responsible NSA/DSA as well as the Security Office of the contracting authority shall be promptly and fully informed of any unauthorised disclosure or loss of EUCI. Action may be taken by the contracting authority in co-ordination with the contractor's responsible security authorities, as deemed necessary .
6. All EUCI provided or generated under this contract shall continue to be protected in the event of termination of the contract.
7. The contractor or subcontractor shall return to the contracting authority as soon as possible or upon termination of the classified contract or subcontract, EUCI held by it. Where practicable, with the agreement and under instructions of the contracting authority, EUCI may be destructed.
8. Electronic handling and transmission of EUCI must be in accordance with the provisions laid down in Article 10 and Annex IV of the Council security rules (CSR). This includes inter alia the following particular requirements:
 - (a) communication and information systems handling EUCI (CIS) must undergo an accreditation process under the authority of a Security Accreditation Authority recognised by the NSA/DSA.
 - (b) transmission of EUCI in electronic form must be protected by cryptographic devices approved in accordance with Article 10(6) of the CSR.
 - (c) CIS handling and transmitting EUCI classified C-UE/EU-C and above must be TEMPEST proof.
9. Safeguarding of EUCI will require physical security measures in accordance with the provisions laid down in Article 8 and Annex II of the Council security rules (CSR).

10. Management of classified information must be in accordance with the provisions laid down in Article 9 and Annex III of the Council security rules (CSR). This includes inter alia the following particular requirements
 - (a) To indicate clearly EDA, as the originator of the information to be created during the performance of this contract and guarantee originator rights, classified information originated by the contractor will, in addition to the EU security classification marking mentioned in the Security Classification Guide, bear the originator identifier "EDA" alongside or below every occurrence of the security classification marking.
 - (b) In addition to the security classification markings provided for in the Security Classification Guide, classified information might include explicit releasability statements, and further access or distribution limitations may be added to the releasability statement as deemed necessary by the originator.

PARTICULAR REQUIREMENTS FOR INFORMATION CLASSIFIED RESTREINT UE/EU RESTRICTED

11. A Facility Security Clearance (FSC) or Personnel Security Clearance (PSC) is not required. However, classified information at RESTREINT UE/EU RESTRICTED level shall only be accessible to contractor/subcontractor personnel requiring such information for the performance of the contract (need-to-know principle), who have been briefed on their responsibilities and on the consequences of any compromise or breach of such information, and have acknowledged their responsibilities with regard to protecting such information.
12. The contractor must have appointed a Facility Security Officer (FSO), who will be responsible for enforcing its security obligations regarding this contract. The following data shall be provided to the contracting authority before the signature of the contract to EDA, and every time thereafter when any change occurs: FSO's name, phone, fax and email.
13. Except where the contracting authority has given its written consent, the contractor or sub-contractor shall not give access to RESTREINT UE/EU RESTRICTED information or material to any other person other than its authorised personnel.
14. The contractor or sub-contractor shall maintain the security classification markings of classified information generated by or provided during the performance of a contract and shall not downgrade or declassify information without the written consent of the contracting authority.
15. Information or material classified RESTREINT UE/EU RESTRICTED must be stored in locked office furniture inside Administrative Areas, as defined in Annex II, title IV, point 14 of the CSR. During travel, documents must be carried inside an opaque envelope bearing only the addressee's name. It must not leave the possession of the bearer and it must not be opened en route or read in public spaces.
16. Communication and Information Systems (CIS) where RESTREINT UE/EU RESTRICTED is going to be handled, shall have been accredited by the relevant Security Accreditation Authority (SAA) of the EU Member State (EU MS) where the contractor is registered. (see point 49, annex IV of CSR).
17. When no longer required, classified RESTREINT UE/EU RESTRICTED documents shall be destroyed by methods preventing its reconstruction in whole or in part.

Any communication relating to security issues should be sent to the following address:
European Defence Agency
Security Unit
Rue de Drapiers 17-23

B - 1050 Brussels
e-mail: security@eda.europa.eu

CONDITIONS UNDER WHICH THE CONTRACTOR MAY SUBCONTRACT

18. The contractor must obtain written permission from EDA, as contracting authority, before subcontracting any parts of a classified contract.
19. No subcontract may be awarded to industrial or other entities registered in a non-EU Member State which has not concluded a security of information Agreement or Security Arrangement with EDA.⁶
20. Where the Contractor has concluded subcontracting arrangements in accordance with this contract and with the provisions of Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information, the provisions of this annex will apply *mutatis mutandis* to the subcontractor(s) and its/their personnel. In such a case, it is the responsibility of the contractor to ensure that all subcontractors apply these principles to their own subcontracting arrangements.
21. The contractor may not grant access to subcontractors' personnel or to transmit any classified information or material to a subcontractor without the prior written consent from the contracting authority.
22. Where subcontracting arrangements are made, the main contractor's Facility Security Officer will ensure that the information required in this security annex is grouped by subcontractor and clearly identified as such.

VISITS

23. Should EDA, contractor(s) or subcontractors require access to information classified RESTREINT UE/EU RESTRICTED or access to secured areas, in each other premises, visits shall be arranged in connection with the NSA/DSA, concerned, following standard international visit procedures, unless otherwise determined by different national procedures set up by relevant NSA/DSA (e.g: direct arrangement between the sending and receiving establishment): a visit request will be submitted by the visitor through his/her Facility Security Officer, certifying/requesting NSA/DSA and receiving NSA/DSA to the agency, organization or facility to be visited. For related visits to the same level of classified meetings organized by EDA, a Request for Visit (RfV) form⁷ shall be filled out and sent with the required data directly to EDA Security Unit (security@eda.europa.eu), unless otherwise determined by the relevant NSA/DSA, at least five (5) working days prior to the visit.
24. For pMS national classified information at RESTRICTED level, visits will be organized in accordance with national laws and regulations.

ASSESSMENT VISITS

⁶ Till now EDA has not been included in any of the security of information Agreements that the EU has signed with Third Parties. The only Security Arrangement signed by EDA with a Third Party is with the European Space Agency (ESA). EDA security will provide you the most updated situation on security agreements/arrangements with Third Parties, under request: eda.security@eda.europa.eu

⁷ The EDA RfV form will be provided by EDA Security Unit, upon FSO's contractors requests to security@eda.europa.eu.

25. EDA Security Unit may, in coordination with the responsible NSA/DSA, conduct visits at concerned contractors or subcontractors facilities to verify the appropriate implementation of the security requirements for the handling of EUCI at the level RESTREINT UE/EU RESTRICTED.

SECURITY CLASSIFICATION GUIDE

26. A list of the items in this contract which are classified or to be classified in the course of performance and the rules for so doing are contained in the Security Classification Guide (SCG). The SGC is an integral part of this contract and can be found in Appendix II to this annex.
27. The contractor(s) might propose changes, during the life-time of the contract, regarding the classification of information to be created by or provided to them. In case of acceptance by the Agency, any subsequent change to the SCG (up to the overall level of classification of the contract) will be officially notified by EDA to the contractor(s) and to the Member State(s) NSA(s)/DSA(s) to keep them informed over the abovementioned changes.

APPENDIX II
SECURITY CLASSIFICATION GUIDE

TABLE OF CONTENT

Introduction

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Introduction

As stated in the Council Security Rules 2013/488/EU (CSR), prior to launching the call for tender and letting this classified contract, the EDA, as the contracting authority, has determined the security classification of any information that has been provided to bidders or contractors, as well as the security classification of any information that has to be created by the contractor. For that purpose, the EDA has prepared this Security Classification Guide (SCG) to be used for the performance of the contract.

The overall level of classification of this contract may not be lower than the highest classification of any of its elements. At this respect, the overall classification is RESTREINT UE/EU RESTRICTED.

This SCG may be expanded throughout the life of this contract and the elements of information may be re-classified or downgraded.

The SCG has two parts: the *General Instructions* and the *Elements Table*

General Instructions

With regard to European Union Classified Information (EUCI) created or handled by the contractor or subcontractor, the rights incumbent on the originator shall be exercised by the EDA, as the contracting authority (see point 23, Annex V of CSR). In this respect, EUCI created during the performance of this contract should bear the originator identifier as explained further below in these general instructions (markings).

EDA, as originator, retains control of every EUCI which created under the performance of this contract. This means that its prior written consent must be sought before EUCI is:

- (a) downgraded or declassified;
- (b) used for purposes other than those established by the originator;
- (c) disclosed to any third State or international organisation;
- (d) disclosed to another contractor or prospective contractor.

EUCI in electronic form may only be created on CIS accredited by the competent Security Accreditation Authority. The classified information itself as well as the filename and storage device (if external, such as CD-ROMs or USB sticks) must bear the relevant security classification marking.

Hardcopies or electronic versions of documents (e.g. studies, reports, analysis, specifications and descriptions, technical requirements, performances or any other documentation) as well as data storage media (e.g. floppy disks, compact disks, CD ROMS, DVD, MP3, memory sticks, microchips, etc.) containing information generated in connection with the Contract shall be assigned an EU security classification as prescribed in this appendix. This includes copies, reproductions, extracts or any other derivatives of documents or data storage media containing such EUCI.

Unless otherwise specified hereafter each document or data storage media shall bear the overall security classification level at maximum RESTREINT UE/EU RESTRICTED.

In case documents or parts thereof contain information not requiring a security classification or requiring a security classification at a lower level, the different elements shall be identified in a separate check list, stating their respective level of classification. In such a case, each document or data storage media shall bear the highest level of classification of the information contained therein.

A higher classification may be assigned to compilations of documents, which individually require a security classification at a lower level, provided the compilation provides an added factor that warrants a higher classification than that applied to its component parts. However, such classification of compilations shall not exceed the highest classification level provided for under this Contract.

Any uncertainties concerning security classifications to be applied or any proposals for changes or amendments shall be addressed to the Agency's Contracting Unit, the Project Officer and electronically to security@eda.europa.eu.

Classification

The classification level of EUCI to be created under this contract (elements) shall be determined in accordance with this SCG (see the part Elements Table).

The EUCI to be created during the performance of this contract shall be classified at one of the following levels:

RESTREINT UE/EU RESTRICTED: information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of the Member States.

Markings

As stated in the CSR, EUCI shall bear a security classification marking in accordance with the rules given in the paragraph above, and it may bear additional markings to designate the field of activity to which it relates, identify the originator, limit distribution, restrict use or indicate releasability. EUCI created during the performance of this contract must bear the originator identifier as explained in the following paragraph.

EDA, as originator, must be clearly identifiable. His originator identifier may be placed alongside or below every occurrence of the security classification marking. Two examples of this are:

RESTREINT UE/EU RESTRICTED – EDA
RESTREINT UE/EU RESTRICTED
EDA

EUCI may bear security caveats in addition to security classification markings.

Elements Table *(to be completed in the final draft of the contract)*

Security classification assigned to information provided, or classification guide for EUCI to be created:

Element	Classification	Declassification/ Downgrading	Remark