

**NON-DISCLOSURE (CONFIDENTIALITY) AGREEMENT**

**To**

**Service contract No. 14.CAT.OP.028**

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**European Defence Agency (EDA)**, having its offices located at Rue des Drapiers 17-23, B-1050 Brussels, Belgium, represented for the purposes of the signature of this contract by [name and title],

hereinafter referred to as "**the Holder**",

On one part,

and

....., registration number ....., with offices at ....., and a VAT number ....., represented for the purposes of the signature of this contract by [name and title],

hereinafter referred to as "**the Recipient**",

On the other part,

Hereinafter all individually referred to as the "**Party**" and collectively referred to as the "**Parties**";

**WHEREAS**

- The Recipient, has been awarded **Service contract No. 14.CAT.OP.028**, following a competitive open tender launched by EDA;
- The Holder and the Recipient, pursuant therefore to the above-mentioned **Service contract No. 14.CAT.OP.028** and more specifically, in order that the Recipient implements its tasks and obligations under the said contract, anticipate that the Holder may need to disclose or deliver to the Recipient [specify: scenarios/Final Report/etc.] of the EDA study/studies delivered under Service Contract No. [ref. number and title], which may include documents, components, parts, information, drawings, data, sketches, plans programs, specifications, techniques, processes, software, inventions and other materials, both written and oral, of a proprietary nature, including without limitation any and all information relating to marketing, finance, forecasts, invention, research, design or development of information system and any supportive or incidental subsystems, and any and all subject matter claimed in or disclosed by any patent application prepared or filed by or on behalf of the Holder, or belonging to third parties transferred or not to the Holder, in any jurisdiction, and any amendments or supplements thereto ("Proprietary Information");

- The Holder desires to assure that the confidentiality of any Proprietary Information is maintained by the Recipient;

**Now, and therefore, in consideration of the foregoing, the Parties agree as follows:**

## **Article 1**

The Recipient agrees and undertakes:

- (a) that it will keep all Proprietary Information strictly confidential and will protect it from unauthorised access and loss; and will not use, copy, or disclose to other than the Holder, or without the Holder's written consent, the Information in whole or in part, in any manner or form, for other than the sole purpose of enabling the Recipient to implement its tasks and obligations under the above-mentioned **Service contract No. 14.CAT.OP.028**;
- (b) that it may disclose the Information only to those of its experts (officers, employees, agents, representatives, etc.), both at Holder's premises and Recipient's premises, as need to know the Information for the purposes set out in paragraph (a) above. If the Recipient needs to disclose the Information to sub-contractors the Recipient shall first inform the Holder for prior agreement, obtain from the sub-contractors a signed agreement in the same form as this Agreement, and forward it promptly to the Holder for approval;
- (c) that it will use the same degree of care to protect the Proprietary Information as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care; and
- (d) that it will act in good faith at all times in relation to the Proprietary Information

## **Article 2**

Article 1 imposes no obligations upon the Recipient with respect to Proprietary Information which:

- (a) is known to the Recipient before disclosure by the Holder, and is not subject to any obligation of confidentiality; or
- (b) is or becomes publicly known through no act or default on the part of the Recipient; or
- (c) is received by the Recipient without any obligation of confidence from a third party having a right to disclose it; or
- (d) has been generated independently by the Recipient
- (e) is required to be disclosed by order of a court of competent jurisdiction, or by order of a governmental agency or legislative body under any written law, regulation or legal order.

### **Article 3**

All property received by Recipient from the Holder, including all Proprietary Information, shall remain at all times the sole property of the Holder, and this Agreement shall not be construed to grant to Recipient any patents, licenses or similar rights to such property and Proprietary Information disclosed to Recipient hereunder.

### **Article 4**

The Recipient shall, upon request of the Holder, or at the latest upon completion of the implementation of the above-mentioned **Service contract No. 14.CAT.OP.028**, return to the Holder all documents, drawings and other tangible materials, including all Proprietary Information and all manifestation thereof, delivered to Recipient, and all copies and reproductions thereof, when this Agreement shall then terminate except for the restrictions and obligations set out in paragraphs (a) and (b) of Article 1 above.

### **Article 5**

The provisions of this Agreement shall be in addition to, and not in substitution for, any obligation of confidence, whether arising under **Service contract No. 14.CAT.OP.028** or another contract or otherwise between the Recipient and the Holder, in respect of the Information.

### **Article 6**

This Agreement is personal to the Holder and the Recipient and shall not be assigned by either one of them without the prior written consent of the other which shall not be unreasonably withheld, except for the purposes of corporate merger, reorganisation or reconstitution without change of control; provided that in all cases of assignment the assignee effectively undertakes to perform all the obligations of the assignor as though the assignee had been an original party to this Agreement.

### **Article 7**

This Agreement sets out the entire agreement between the Holder and the Recipient in connection with the subject matter of this Agreement. Neither this Agreement nor any of its provisions shall be amended or waived unless agreed to in writing by duly authorised representatives of the Holder and the Recipient. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

### **Article 8**

This Agreement is made subject to European Union law, complemented, where necessary, by the national substantive law of Belgium. 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.

For the **Holder**,

**[name]**

[title]

European Defence Agency (EDA)

For the **Recipient**,

**[name],**

[title]

[Contractor]

Signature: .....

Signature: .....

Done in Brussels, on .....

Done in ....., on .....

Made in English, in two original copies, one for each Party.