

DRAFT MODEL CONTRACT

The following Research & Technology Contract

[B-nnnn-RT-GP]

on

[PROPOSAL TITLE]

[(PROPOSAL ACRONYM)]

of the

“Combat Equipment for Dismounted Soldier Feasibility Study Programme
(CEDS-FSP)”
(B-1143-GEM1-GP)

under the Call B-1143-RT-GP

has been agreed between

the European Defence Agency
(hereinafter referred to as the Contracting Authority)

and

[CONSORTIUM LEAD, TOWN, COUNTRY]

[The _____ aforementioned entities, acting together, being jointly and severally liable for the contract performance and hereinafter referred to individually as the “Co-contractor(s) and collectively as the “Contractor”, _____ well being appointed as the “Lead Contractor”,
of the other part,]¹
(hereafter referred to as the Contractor),

Together referred to as the Parties, or Party, if referred to individually,
and consists of [] pages and [] Annexes.

This Contract is partly funded by the Ad Hoc CEDS-FSP Budget and the Contractor and Sub-contractors in the proportions of [€ amount] and [€ amount] in accordance with Article 13 and Annex- Pricing and Payments.

¹ In case of Consortium

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ARTICLE 1 - DEFINITIONS

Agency means the European Defence Agency established under the EU Council Joint Action 2004/551/CFSP of 12 July 2004 and the Council Decision 2011/411/CFSP of 12 July 2011 defining the statute, seat and operational rules of the European Defence Agency.

Background Information means any Information not generated or conceived under this Contract.

Contract means this Contract document, including as an integral part, the introduction of the Contract and its Annexes and any modifications and changes made from time to time in accordance with the provisions in the Contract.

Contracting Authority means the European Defence Agency, which will be the sole contracting Party acting on behalf of the contributing Members.

Contractor means the legal entity designated as such on the front page.

contributing Member(s) (cM(s)) means the Federal Minister of Defence and Sports of the Republic of Austria, the Ministry of Defence of the Republic of Finland, the Minister of Defence of the French Republic, the Federal Ministry of Defence of the Federal Republic of Germany, the Ministry of National Defence of the Portuguese Republic, the Ministry of National Defence of Romania, the Minister of Defence of the Kingdom of Spain, and the Swedish Armed Forces of the Kingdom of Sweden representing their States.

Days means calendar days.

Defence Purposes means the use by or for the armed forces, including military intelligence, of a Contributing Member in any part of the world. It includes, but is not limited to, study, evaluation, assessment, research, design, development, manufacture, improvement, modification, maintenance, repair, refurbishment, and product acceptance and certification, operation, training, disposal and other post design services and product deployment. This does not include any sale, loan or transfer to a Third Party..

Deliverable means any contractually required report, demonstrator(s) etc to be delivered under the terms and conditions in this Contract by the Contractor.

PMG means the Project Management Group, which is the group of government officials appointed by the contributing Members to assist the Contracting Authority in the technical management of the Contract.²

Foreground Information means any Information generated or conceived under this Contract.

Government Purposes means the use by or for any government organisation of a Contributing Member. This does not include any sale, loan or transfer to a Third Party.

Information means any information, knowledge or data, regardless of form or characteristics including but not limited to: that of a scientific or technical nature, experimental and test data, designs, improvements, photographs, software (including source code), reports, manuals,

² When no PMG is appointed, the equivalent responsibilities may be assumed by the Contracting Authority.

specifications, processes, techniques, inventions (whether patented or not), technical writings, sound recordings, semi-conductor topography, pictorial reproductions, drawings and other graphical representations, whether on magnetic tape, in computer memory, or in whatever form presented, and whether or not subject to copyright or other legal protection..

Intellectual Property (IP) means any Information as defined above and which is protectable under law, including but not limited to design rights, patents, copyright and trade secrets. Accordingly, “Foreground IP” and “Background IP” means IP in Foreground and Background Information respectively.

Lead Contractor means the entity acting as single point of contact in relation with the Contracting Authority which have full authority to bind the Contractor in all respects concerning the implementation of the Contract and to sign this Contract on behalf of the Contractor.

Originator means the Contractor, Sub-contractor or other organisation originating the Foreground Information concerned.

Purposes of the Contract in relation to the Contractor shall mean for the purposes of discharging its obligations under the Contract and, in relation to the Contracting Authority shall mean for the purposes of its decision making, managing, monitoring, evaluating, assessing and auditing the work, under the Contract and using the Foreground and Background Information as provided for under the Contract.

Security Purposes means the use by or for the appropriate authorities of a Contributing Member including, but not limited to, border control, the protection of citizens, critical infrastructure and transportation whether from deliberate acts (such as terrorism) or accidental or natural events (such as natural disasters). This does not include any sale, loan or transfer to a Third Party.

Sub-contract means a contract placed by the Contractor on any of the approved Sub-contractors as listed in Annex – Contractor and approved Sub-contractors and covering a share of the work under this Contract.

Sub-contractor means an industrial organisation, governmental organisation or academic institution performing work under a Sub-contract.

Third Party means any person or legal entity that is not a Contributing Member in that Project/Programme. Contractors will not be regarded as Third Parties for the purposes of the contract in which they are engaged. The term Third Party does not include the support personnel of Contributing Members.

ARTICLE 2 - ORDER OF PRECEDENCE

2.1 This Contract includes the following Annexes as listed below.

- Pricing and Payments
- Statement of Work
- Progress and Milestone plan
- Security Aspects Letter (where applicable)
- Contractor and approved Sub-contractors
- Options
- Template Model Confidentiality Agreement
- Background Information

2.2 In the event of any inconsistency between the Contract Articles and any of its Annexes, the Contract Articles prevail. If there are any inconsistencies between the Annexes, the inconsistency shall be resolved by giving precedence as they are listed above.

ARTICLE 3 - OBJECTIVE

3.1 The objective of this Contract is to regulate terms and conditions to ensure an effective and solution oriented development of the Deliverables.

The Parties agree that the objective(s) of this Contract are as set out in Annex – Statement of Work

ARTICLE 4 - SCOPE OF WORK

- 4.1 The Contractor shall undertake the following work and prepare and deliver such reports and/or other Deliverables on the results obtained as described in Annex - Statement of Work and Annex - Progress and Milestone plan:

[Proposal section]

ARTICLE 5 - MANAGEMENT

- 5.1 The Contractor shall grant the PMG and the Contracting Authority the right to be present at and to participate in the contractual meetings or workshops listed in Annex – Progress and Milestone plan to the Contract. The Lead Contractor shall inform the Contracting Authority at least twenty five (25) Days in advance of the date on which such a meeting/workshop is planned to take place.
- 5.2 Reports on the progress of the work and other reports, all as set out in Annex - Progress and Milestone plan, shall be prepared by the Lead Contractor during the term of this Contract.
- 5.3 The Contractor shall attach to the reports a list of the technical documents prepared. The Contracting Authority may consult the technical documents needed to assess the results reported.
- 5.4 The Lead Contractor shall conduct progress review meetings on a regular basis as detailed in Annex - Progress and Milestone plan, to be attended by the PMG and representatives of the Contracting Authority. The Lead Contractor shall prepare the agenda, in consultation with the PMG Chairman and prepare and distribute the minutes. The Chairman of the PMG will chair the meetings. The meeting agenda and all related documents shall be sent to the PMG and the Contracting Authority at least fifteen (15) Days prior to each meeting. Minutes of the meetings shall be sent to the PMG and the Contracting Authority within fifteen (15) Days after the meetings. The minutes shall contain, as a minimum, a summary statement of progress made, problem areas identified and corrective action taken or proposed.
- 5.5 The PMG is not a Party to this Contract and shall have no formal contractual responsibilities.
- 5.6 The Lead Contractor shall deliver an unclassified publishable summary upon completion of the Contract.
- 5.7 At the end of the Contract, a copy of all the information defined as Deliverable will be recorded on a CD-ROM in a commonly used, non-pdf format (e.g Word, Powerpoint etc) and provided by the Lead Contractor to the Contracting Authority in ten (10) copies.

ARTICLE 6 - EXECUTION OF THE CONTRACT

- 6.1 The work shall be carried out in the establishments of the Contractor and in those of his Sub-contractors unless otherwise agreed with the Contracting Authority.
- 6.2 All work under this Contract shall be completed within [Proposal section A4 as text (and number)] months after the starting of the work as specified in the Annex - Progress and Milestone plan and be delivered in accordance with the Contract.

ARTICLE 7 - TECHNICAL MATTERS

- 7.1 Notwithstanding any approval of drawings, specifications, schedules and other relevant technical and administrative documents by the Contracting Authority in accordance with the terms of this Contract, the Contractor shall be responsible for carrying out the work as specified in Article 4 - Scope of Work.
- 7.2 The work under this Contract shall be performed in accordance with the standard(s) listed in Annex – Statement of Work.
- 7.3 The Contracting Authority reserves the right to verify application of this/these standards.
- 7.4 After acceptance of the Final Report, the Contractor shall for period of up to six (6) months provide the Contracting Authority and the PMG access to technical Information in the possession of Contractor necessary to clarify any technical Information contained in the Final Report to the extent requested by the Contracting Authority and/or the PMG³. The Parties agree that the need for clarification will be kept to a minimum.
- 7.5 Notwithstanding Article 7.4, after acceptance of the Final Report, the Contractor shall also provide assistance to any contributing Member requesting it to further elaborate on the technical Information contained in the Final Report. A fair and reasonable price will be agreed upon based on travel, subsistence and labour costs incurred between the Contractor and that contributing Member.

ARTICLE 8 - SUB-CONTRACTING

- 8.1 Work under this Contract shall only be sub-contracted to those entities specified in Annex - Approved Sub-contractors.
- 8.2 The Contractor shall be responsible for the overall performance of this Contract including the performance of all Sub-contractors. In placing the Sub-contracts, the Contractor shall ensure that all relevant requirements of this Contract, including those rights and privileges to be secured by the terms of this Contract for the benefit of the Contracting Authority, shall be reflected in the Sub-contracts. If so requested, the Contractor shall provide copies of the Sub-contracts.
- 8.3 The placement of any additional sub-contracts shall be referred to the Contracting Authority for approval. When the Contractor has to replace a Sub-contractor he shall inform the Contracting Authority without delay. It is the Contractor's responsibility to find a new Sub-contractor and to ask for approval of the Contracting Authority, such approval not being withheld unreasonably. It is also the Contractor's responsibility to organise the replacement, including the transfer of rights and responsibilities for the Sub-contract to a new Sub-contractor. Any costs related to the replacement will be borne by the Contractor. If the Contracting Authority refuses the proposal, the responsibility to find a new Sub-contractor remains with the Contractor.

³ Even if the Final Report can be accepted as according to the Contract, there may be a need to clarify minor things such as elaborations, meanings, and consequences in the Final Report.

ARTICLE 9 – CO-CONTRACTING

- 9.1 The Co-contractors shall be jointly and severally liable⁴ for the overall performance of this Contract including the performance of all Sub-contractors. The Lead Contractor shall act as single point of contact in relation with the Contracting Authority and shall have full authority to bind the Contractor in all respects concerning the implementation of the Contract and to sign this Contract on behalf of the Contractor.
- 9.2 The Contractor shall make sure that a consortium agreement is signed by all the Co-contractors in a timely manner and that it is consistent with the provisions of this Contract. If so requested by the Contracting Authority, the Contractor shall provide copies of the signed consortium agreement.

⁴This is the preferred option. Alternative option shall be the full liability with the Lead Contractor.

ARTICLE 10 - CHANGE ORDERS AND AMENDMENTS

- 10.1 The Contracting Authority may request changes that are within the objective of this Contract as set out in Article 3.
- 10.2 The Contractor cannot claim statements, actions, or omissions by the Contracting Authority or by the PMG including any that might feature in minutes and/or correspondence, as the basis for regarding the Contract to be changed.
- 10.3 To request a change as per Article 10.1, the Contracting Authority will issue a change proposal. The Lead Contractor shall advise, free of charge, the Contracting Authority of the feasibility, cost and other Contract implications and consequences of the change proposal within twenty five (25) Days of receipt of the proposal. On that basis, the Contracting Authority will consider whether to proceed with the change, and when appropriate, will negotiate equitable terms for the change with the Contractor, and will authorise the Contractor through issuing a change order to undertake the work pursuant to the negotiated terms as agreed.

The Contracting Authority may initiate a deeper investigation or study by the Contractor with respect to a change proposal initiated by the Contracting Authority. The Lead Contractor shall in these cases inform the Contracting Authority if such investigations or studies will involve additional costs, and if the Contracting Authority decides to proceed, the Contractor will have its reasonable cost covered by the Contracting Authority whether or not the change proposal is implemented.

- 10.4 The Contractor may suggest changes if he considers that such changes will result in improvements and/or reduction in costs. Such suggested changes shall be accompanied by details of the cost and other contractual implications. The Contractor shall not, however, commence any work that involves the suggested change until the Contracting Authority has accepted the suggestion by issuing a written change order.
- 10.5 Any change order shall be agreed between the Parties and be implemented by way of a written, numbered amendment to the Contract signed by the Parties.

ARTICLE 11 - ACCESS TO PREMISES

- 11.1 The PMG and the staff of the Contracting Authority shall, subject to reasonable notice, have access to the premises of the Contractor, including its Sub-Contractors, in which the work of this Contract is being carried out, and shall have such right as is reasonably necessary to inspect the progress of the work provided that they comply with the Contractor's general rules and instructions. Such rights of access shall be exercised in such a way as to prevent or to minimise any disruption to the work being performed and shall be subject to appropriate safeguards.
- 11.2 The Contracting Authority shall give reasonable notice to the Lead Contractor of its intention or that of the PMG to visit the premises for the Purposes of this Contract.

ARTICLE 12 - PRICES

- 12.1 Annex - Pricing and Payments provides all details of costs and prices for this Contract.
- 12.2 Prices are firm and fixed and include the incoterm Delivery Duty Paid (DDP) as defined in the “incoterms 2000”, places of destination being the Contracting Authority and PMG members’ offices.

ARTICLE 13 - PAYMENTS

- 13.1 In consideration of the Contractor's performance under this Contract, the Contractor shall be paid in accordance with the payment plan at Annex – Pricing and Payments and in accordance with the terms of this Article 13. Payment of the Sub-contractors, if any, shall be made by the Contractor.
- 13.2 When the work comprised in the milestone for which payment is sought has been satisfactorily completed, the Contracting Authority will request the Lead Contractor to promptly send the related invoices, notifying the Co-contractors at the same time. The Lead Contractor shall then collect the invoices and – prior to sending these to the Contracting Authority – have the invoices certified by a duly authorised official, to confirm that the invoices are in accordance with the terms of the Contract.
- 13.3 The invoices for payment shall be made out to the Contracting Authority/Financial Unit. Furthermore, the invoices shall specify the amounts in Euro and mention the reference to the contract, the milestone or accounting period to which they relate.
- 13.4 Payments will be made not later than forty five (45) Days from the date of receipt by the Contracting Authority of the invoices.
- 13.5 If the Contractor has failed to meet a particular milestone under this Contract, the Contracting Authority may withhold, in whole or in part, payment for such a milestone. The making of any milestone payment shall in no way reduce the responsibility of the Contractor to carry out his obligations under this Contract. If at any time by reason of payments made, overpayment to the Contractor results from the rejection of Deliverables under this Contract or from any other cause whatsoever, the amount of such overpayment shall be taken into account in assessing any further payments or shall be recoverable from the Contractor. Payments for Deliverables under this Contract shall be abated by the amount of milestone payments made in respect of such Deliverables.
- 13.6 Final payment shall be made upon acceptance of all Deliverables unless specified otherwise. The final invoices shall be submitted by the Lead Contractor to the Contracting Authority within three (3) months from the date on which the Final Report is approved. The final invoices shall reflect and, when necessary, be adjusted for any milestone payments previously made.

ARTICLE 14 - ACCOUNTS, EXAMINATION OF RECORDS AND AUDIT

- 14.1 The Contractor shall ensure that proper accounts and records are kept of the cost of the work and of all expenditures or commitments made by the Contractor or its authorised representatives in connection therewith and of invoices, receipts and vouchers relating thereto. Such accounts, records, invoices, receipts and vouchers shall be open to audit and inspection as required by the relevant audit authorities in the Contractor's or Sub-contractor's country in accordance with national rules. The Contractor shall make available to the Contracting Authority or a governmental authorised representative all such Information as it may from time to time require, with reference to such accounts, records, invoices, receipts and vouchers. Except in the case of change orders, audits will be made preferably after completion of this Contract or of a significant phase thereof in order to minimise any disruption in the performance.
- 14.2 Except in the case of a firm or fixed price Contract, any payments made pending completion of the audit shall be regarded as [provisional/interim] payments only and shall be adjusted to the extent necessary to reflect the results of said audit, and, if there has been any overpayment, it shall be promptly refunded in the manner specified by the Contracting Authority.

ARTICLE 15 - DELIVERY AND ACCEPTANCE

15.1 Delivery

- 15.1.1 Delivery shall occur in accordance with Annex - Progress and Milestone plan, Delivery Duty Paid (DDP), to the places of destination being the Contracting Authority and the PMG members' offices. Deliverables shall be sent in one CD-ROM copy each to the Contracting Authority and each member of the PMG⁵.
- 15.1.2 If applicable, when handing over the Deliverable, the Contractor shall ensure that it is properly packed and secured.
- 15.1.3 When a Deliverable is rejected, that Deliverable shall for the Purposes of the Contract be considered as not having been delivered under this Contract.
- 15.1.4 If it is agreed that any delay in delivery is attributed to or a consequence of force majeure, the time of delivery shall be extended by the period equalling that delay, without prejudice to Article 20 - Termination. The Contractor may only claim an extension of time under this paragraph if he has notified the Contracting Authority of relevant delays as soon as possible, and in any case prior to the due date of delivery, with supporting documentary evidence.
- 15.1.5 A Third Party's failure to fulfil the obligations undertaken towards the Contractor or a Third Party's late fulfilment of its obligations shall not be considered force majeure unless the Contractor proves that the failure to fulfil the obligations or the late fulfilment of the obligations is attributable to force majeure and that he could not reasonably be required to deliver the Deliverables within the agreed time, taking into account the point of time at which he became acquainted with the existence of the force majeure circumstance.
- 15.1.6 Extension of the delivery time due to force majeure shall not affect the prices payable under this Contract.

15.2 Acceptance

- 15.2.1 Acceptance by the Contracting Authority of work, including Deliverables, shall be in accordance with the terms of the Contract. The Contracting Authority shall promptly either:
- a) accept the work, or
 - b) notify the Lead Contractor in writing, giving reasons why it considers acceptance may be withheld.

In determining whether the work is in conformity with the Contract and acceptance made, the Contracting Authority will consult with the PMG.

⁵ The exact list of recipients as well as the format and number of copies of deliverables will be identified in the awarded contract(s) to be signed. Recipients may include in addition the cM representatives, especially when cMs are not represented in the PMG.

15.3 Rejection

- 15.3.1 The Contracting Authority may reject the Deliverable, which on inspection prior to or within forty five (45) Days following delivery is found not to conform to the requirements of this Contract. After this period of time, the Deliverable shall be deemed accepted.
- 15.3.2 When the Contracting Authority rejects a Deliverable or consignment after delivery, the Contractor shall at his own expense deliver in the place of each and every rejected item, an item that conforms to the requirements of this Contract and shall do so within an agreed period of time.
- 15.3.3 Where the Contractor objects to a rejection, he may give the Contracting Authority notice of objection within twenty five (25) Days from receipt of notification of rejection. This will not hinder the progress for the remaining part of the Contract, and consequential payments. The objection may constitute a dispute between the Parties, which shall be dealt with in accordance with Article 19 - Disputes. Where the Contractor gives notice of objection the rejected item shall not be removed until the Contracting Authority so directs.

ARTICLE 16 - RISK AND TITLE

16.1 Risk of Loss or Damage

16.1.1 The Contractor is responsible for the Deliverables and any materials, equipment, fittings or things acquired or allocated by him for incorporation therein until delivery has been effected in accordance with Article 15.1 and shall make good any loss or damage to the items or any such material, equipment, fittings or things howsoever occasioned which may occur before such delivery.

16.2 Title

16.2.1 Each Deliverable that is constructed together with its component parts and equipment so far as is incorporated therein, and all materials and other things whatsoever which the Contractor shall acquire or allocate for incorporation in any of the Deliverables, shall as from the time of acceptance by the Contracting Authority vest in and become the absolute property of the Contracting Authority.

ARTICLE 17 - DISCLOSURE AND USE OF INFORMATION - INTELLECTUAL PROPERTY RIGHTS

[The layout of this Article is divided either into fully funded Ad Hoc R&T projects, named Option A, or partly funded Ad Hoc R&T projects, named Option B. The section named Option A comes first and the section named Option B comes last. Either option is applicable depending on whether the Ad Hoc R&T project in question is fully or jointly funded, unless specific alternative provisions are included in the relevant call for proposals].

OPTION A - PROVISIONS REGARDING FULLY FUNDED R&T PROJECTS

[To be deleted if Option B is used]

17.1 Ownership of IP Rights

17.1.1 All rights in Foreground IP shall belong to the Originator and shall be subject to this Article 17.

17.1.2 No change of ownership of Background Information will take place as a result of any work undertaken under the Contract.

17.1.3 The Contractor shall ensure that the terms of engagement of all individuals carrying out work for him under the Contract are such as to vest the ownership as required by Article 17.1.1.

17.2 Patents

17.2.1 The Contractor shall ensure, to the extent he is legally able to do so, that any invention or software covered by an intellectual property right for example patent, registered design, copyright, or the like, arising in Foreground Information and made by an employee of the Contractor in the course of its duties and any individual engaged in carrying out work for him under the Contract, shall vest in the Contractor.

17.2.2 Each contributing Member shall have a non-exclusive royalty-free licence under any invention or software covered by an intellectual property right for example patent, registered design, copyright or the like, secured for those things referred to in Article 17.2.1, to practice or have practised those for Defence Purposes and Security Purposes throughout the world and a right to sub-licence others solely for the purpose of the contributing Member exercising those rights.

17.2.3 The Contracting Authority shall undertake that contributing Members will, in accordance with their national laws and regulations, give their authorisation and consent for all use and manufacture in the course of work performed under the Contract of any invention or software covered by an intellectual property right for example patent, registered design, copyright or the like, issued by their respective countries.

17.2.4 The Contracting Authority shall undertake that any contributing Member exercising its rights under Article 17.2.2 will inform the Contractor of the name of any Third Party authorised to use the patented invention or software covered by an intellectual property right for example, patent, registered design, copyright or the like.

17.3 Patent Applications

- 17.3.1 The Contractor shall notify the Contracting Authority of any patent, registered design, or like application, made in relation to Foreground Information within fifty (50) Days of the date upon which that application is filed.
- 17.3.2 The notification shall identify the application by its date, application number and the country(ies) of filing and shall be accompanied by a copy of the patent, registered design, or like specification and the reference of this Contract under which the invention was made.
- 17.3.3 Notwithstanding Articles 17.3.1 and 17.3.2, where any patent, registered design, or like application is made the subject of restrictions on the ground of national security, the notification shall be made as soon as the restrictions permit.
- 17.4 Patent Infringements
- 17.4.1 The Contractor shall notify the Contracting Authority of any patent infringement claims arising in the course of work performed under this Contract that affect this Contract. The Contracting Authority shall undertake that, where possible, the contributing Members will provide Information available to them that may assist in defending the claim.
- 17.4.2 The Contractor shall indemnify the Contracting Authority and/or the contributing Members in respect of liabilities arising from infringement of Third Party patents resulting from the use of Foreground IP and Background IP necessary to use Foreground IP in accordance with the terms and objectives of this Contract which the Contractor knew or should have known was in breach of the rights of a Third Party. This indemnity shall not apply and the Contractor shall not be liable if:
- a) the Contracting Authority or a contributing Member has made or makes an admission of any sort relevant to an allegation of infringement, that undermines the ability of the Contractor to defend a claim, in respect of the Contracting Authority or the contributing Member concerned;
 - b) the Contracting Authority or a contributing Member has entered or enters into any discussions other than referring the matter to the Contractor, that undermine the ability of the Contractor to defend a claim, on an allegation of infringement with any Third Party without the prior written agreement of the Contractor, in respect of the Contracting Authority or the contributing Member concerned;
 - c) the Contracting Authority or a contributing Member has entered or enters into negotiations in respect of any relevant claim for compensation in respect of use authorised by statute in their jurisdiction, in respect of the Contracting Authority or the contributing Member concerned;
 - d) legal proceedings have been commenced against the Contracting Authority or a contributing Member or the Contractor in respect of use authorised by statute in its jurisdiction, but as far as the Contracting Authority or the contributing Member is concerned only to the extent that the infringing use has been properly authorised under any applicable statutory provision;

- e) a particular use by the Contracting Authority or a contributing Member of anything supplied under the Contract was not reasonably foreseeable by the Contractor at the time of the Contract;
- f) that Foreground IP and/or Background IP are used for Government Purposes, where the relevant terms will be covered under the agreement reached for that use.

17.4.3 The Contracting Authority shall:

- a) indemnify the Contractor against all liabilities for infringement or alleged infringement of Third Party IP rights arising directly from the use, under this Contract, of any material, equipment, document or Information provided by it or resulting directly from a specific instruction from the Contracting Authority to use that Third Party IP, or both;
- b) undertake that it and each contributing Member employs such powers as are available to it or the contributing Members, or both, to minimise all liabilities of the Contractor in respect of Third Party IP rights.

17.4.4 The Contractor shall not be indemnified where Article 17.4.2, a) to c) applies, mutatis mutandis, or where specific limitations of use have been identified in the Contract.

17.5 Publication

17.5.1 The Contractor may place the Foreground Information or any part of it, in the public domain provided that the Contract, or the pertinent work package within the Contract, is not classified and unless the Contracting Authority advises that the publication is not in the national interest of any of the contributing Members.

The Contractor shall give written prior notice of the aforesaid intended publication to the Contracting Authority and allow fifty (50) Days for the Contracting Authority to raise an objection on national interest grounds. In the absence of an objection from the Contracting Authority within this period, the Contractor shall be entitled to proceed with publication. Any objection shall not be made unreasonably.

17.6 Disclosure and Use of Foreground Information

Disclosure

17.6.1 The Contractor shall promptly and without charge disclose the Foreground Information to the Contracting Authority and/or the PMG, on behalf of the contributing Members.

Use

17.6.2 The Contractor acknowledges that the Contracting Authority and Contributing Members may use Foreground Information, or have it used, in confidence in accordance with the relevant terms of Article 18, as follows:

- a) for information and evaluation, without charge;
- b) for the purpose of issuing tenders, without charge;

- c) for Defence Purposes, without charge;
- d) for Security Purposes, without charge;
- e) for Government Purposes, [as set out in the relevant PA.]

17.6.3 The Contractor shall not enter into any agreement or arrangement that will result in a limitation of the rights granted under Article 17.6.1 and 17.6.2 without prior written approval of the Contracting Authority.

17.7 Disclosure and Use of Background Information

Disclosure

17.7.1 Subject to the rights of Third Parties and any applicable security regulations and other national procedures and regulations, the Contracting Authority shall, on request and without charge, promptly undertake to make available to the Contractor all Background Information in its possession or control and in the possession or control of a contributing Member necessary for the performance of the Contract.

17.7.2 Subject to the rights of Third Parties, upon request by the Contracting Authority, the Contractor shall secure in a timely way and make available to the contributing Members Background Information that is necessary for the use of the results⁶ arising from the Contract. The Contractor and the Agency will establish, and update as necessary, a list of such Background Information to be annexed to the Contract which will be made available to the contributing Members. The terms for any use of Background Information are set out in Article 17.7.3.

Use

17.7.3 Subject to any pre-existing rights in the Information, and subject to any specific limitations on the use of the Information, the contributing Members may use received Background Information or have it used as follows:

- a) for information and evaluation of the Foreground Information arising from the contract and for the purpose of performing work under the relevant PA, without charge;
- b) for disclosure with Foreground Information for tender purposes, without charge;
- c) for using Foreground Information for Defence Purposes, other than a) and b) above, on fair and reasonable terms;
- d) for using Foreground Information for Security Purposes, other than a) and b) above, on fair and reasonable terms;

⁶ For the purpose of Article 17.7.2 and 17.7.3 the term “results” is to be understood to cover Foreground Information only.

- e) for using Foreground Information for Government purposes not covered in subparagraphs a) - d) above, on fair and reasonable terms

17.7.4 Where Contractor's pre-existing proprietary rights would normally limit the use that the Contributing Member(s) can make of Background Information, they may be allowed to use the Information or have it used upon fair and reasonable terms to be agreed with the Contractor holding the proprietary rights. If the Contributing Member concerned intends to use the Background Information for Defence and Security Purposes, and has made a fair and reasonable offer to the Contractor, use may commence 3 months from expiry of notice to the Contractor whilst negotiation of fair and reasonable terms continues.

17.8 Notice of Use of Information

17.8.1 The Contracting Authority shall undertake that in the event of an intention by a contributing Member to release to any contractor or potential contractor or other Third Party any Foreground Information or Background Information, or both, the contributing Member will give to the Contractor thirty five (35) Days' prior written notice of that intention.

17.8.2 During the thirty five (35) Days the Contractor may make representations in respect of that intention, including representations relating to its business interests, and may make proposals for the protection of the Foreground Information or Background Information, or both. The contributing Member will be entitled to release the Information after expiry of the thirty five (35) Days but:

- a) if the Contractor has made no representations, the contributing Member will require the intended recipients to sign the Confidentiality Agreement (Annex);
- b) if the Contractor makes proposals which are agreed to by the contributing Member, then the contributing Member will proceed in accordance with those proposals; and
- c) should the contributing Member decide to issue the Information contrary to the representations of the Contractor, that contributing Member will, as a minimum, ensure that the intended recipients have signed the Confidentiality Agreement (Annex).

The decision of the contributing Member will be final.

17.9 Future Contracts

17.9.1 The Contracting Authority shall use its best efforts that in the event that any contributing Member in exercising its right of use under Articles 17.6.2 or 17.7.3 or both:

- a) proposes to place a contract for further Research & Technology work employing Foreground Information or Background Information, or both; or
- b) proposes to employ Foreground Information or Background Information, or both, in development, production or support;

the contributing Member concerned will, where national law permits, give the Contractor, if it is capable of doing so, the opportunity to bid for work that is part of the proposed use. This will remain in effect for five years from the date of acceptance of the last deliverable under this contract.

17.10 Commercial exploitation

17.10.1 Subject to the rights of Third Parties, the Contracting Authority will undertake that each contributing Member, if that contributing Member is capable of doing so, grants to the Contractor a non-exclusive licence on fair and reasonable terms to use that contributing Member's Background Information necessary for use of Foreground Information.

17.10.2 Subject to any restriction set out in this Contract, the Originator shall have the right to exploit any of its Foreground Information.

OPTION B - PROVISIONS REGARDING JOINTLY FUNDED R&T PROJECTS

[To be deleted if Option A is used]

17.1 Ownership of IP Rights

17.1.1 All rights in Foreground IP shall belong to the Originator and shall be subject to this Article 17.

17.1.2 No change of ownership of Background Information will take place as a result of any work undertaken under the Contract.

17.1.3 The Contractor shall ensure that the terms of engagement of all individuals carrying out work for him under the Contract are such as to vest the ownership as required by Article 17.1.1.

17.2 Patents

17.2.1 The Contractor shall ensure, to the extent he is legally able to do so, that any invention or software covered by an intellectual property right for example patent, registered design, copyright, or the like, arising in Foreground Information and made by an employee of the Contractor in the course of its duties and any individual engaged in carrying out work for him under the Contract, shall vest in the Contractor.

17.2.2 Each contributing Member shall have a non-exclusive royalty-free licence under any invention or software covered by an intellectual property right for example patent, registered design, copyright, or the like, secured for those things referred to in Article 17.2.1, to practice or have practised those for Defence Purposes or Security Purposes throughout the world and a right to sub-licence others solely for the purpose of the contributing Member exercising those rights.

17.2.3 The Contracting Authority shall undertake that contributing Members will, in accordance with their national laws and regulations, give their authorisation and consent for all use and manufacture in the course of work performed under the Contract of any invention or software covered by an intellectual property right for example, patent, registered design, copyright, or the like, issued by their respective countries.

17.2.4 The Contracting Authority shall undertake that any contributing Member exercising its rights under Article 17.2.2 will inform the Contractor of the name of any Third Party authorised to use the patented invention or software covered by an intellectual property right for example, patent , registered design, copyright or the like.

17.3 Patent Applications

17.3.1 The Contractor shall notify the Contracting Authority of any patent, registered design, or like application, made in relation to Foreground Information within fifty (50) Days of the date upon which that application is filed.

17.3.2 The notification shall identify the application by its date, application number and the country(ies) of filing and shall be accompanied by a copy of the patent, registered design, or like specification and the reference of this Contract under which the invention was made.

17.3.3 Notwithstanding Articles 17.3.1 and 17.3.2, where any patent, registered design, or like application is made the subject of restrictions on the ground of national security, the notification shall be made as soon as the restrictions permit.

17.4 Patent Infringements

17.4.1 The Contractor shall notify the Contracting Authority of any patent infringement claims arising in the course of work performed under this Contract that affect this Contract. The Contracting Authority shall undertake that, where possible, the contributing Members will provide Information available to them that may assist in defending the claim.

17.4.2 The Contractor shall indemnify the Contracting Authority and/or contributing Members in respect of liabilities arising from infringement of Third Party patents resulting from the use of Foreground IP and Background IP necessary to use Foreground IP in accordance with the terms and objectives of this Contract which the Contractor knew or should have known was in breach of the rights of a Third Party. This indemnity shall not apply and the Contractor shall not be liable if:

a) the Contracting Authority or a contributing Member has made or makes an admission of any sort relevant to an allegation of infringement, that undermines the ability of the Contractor to defend a claim, in respect of the Contracting Authority or the contributing Member concerned;

b) the Contracting Authority or a contributing Member has entered or enters into any discussions other than referring the matter to the Contractor, that undermine the ability of the Contractor to defend a claim, on an allegation of infringement with any Third Party without the prior written agreement of the Contractor, in respect of the Contracting Authority or the contributing Member concerned;

c) the Contracting Authority or a contributing Member has entered or enters into negotiations in respect of any relevant claim for compensation in respect of use authorised by statute in their jurisdiction, in respect of the Contracting Authority or the contributing Member concerned;

- d) legal proceedings have been commenced against the Contracting Authority or a contributing Member or the Contractor in respect of use authorised by statute in its jurisdiction, but as far as the Contracting Authority or the contributing Member is concerned only to the extent that the infringing use has been properly authorised under any applicable statutory provision;
- e) a particular use by the Contracting Authority or a contributing Member of anything supplied under the Contract was not reasonably foreseeable by the Contractor at the time of the Contract;
- f) that Foreground IP and/or Background IP are used for Government Purposes, where the relevant terms will be covered under the agreement reached for that use.

17.4.3 The Contracting Authority shall:

- a) indemnify the Contractor against all liabilities for infringement or alleged infringement of Third Party IP rights arising directly from the use, under this Contract, of any material, equipment, document or Information provided by it or resulting directly from a specific instruction from the Contracting Authority to use that Third Party IP, or both;
- b) undertake that it and each contributing Member employs such powers as are available to it or the contributing Members, or both, to minimise all liabilities of the Contractor in respect of Third Party IP rights.

17.4.4 The Contractor shall not be indemnified where Article 17.4.2, a) to c) applies mutatis mutandis, or where specific limitations of use have been identified in the Contract.

17.5 Publication

17.5.1 The Contractor may place the Foreground Information or any part of it, in the public domain provided that the Contract, or the pertinent work package within the Contract, is not classified and unless the Contracting Authority advises that the publication is not in the national interest of any of the contributing Members.

The Contractor shall give written prior notice of the aforesaid publication to the Contracting Authority and allow fifty (50) Days for the Contracting Authority to raise an objection on national interest grounds. In the absence of an objection from the Contracting Authority within this period, the Contractor shall be entitled to proceed with publication. Any objection shall not be made unreasonably.

17.6 Disclosure and Use of Foreground Information

Disclosure

17.6.1 The Contractor shall promptly and without charge disclose the Foreground Information to the Contracting Authority and/or the PMG, on behalf of the contributing Members.

Use

17.6.2 The Contracting Authority and the contributing Members shall have the right to use, copy and disclose Foreground Information as provided below:

- a) for information and evaluation, without charge;
- b) for the purpose of issuing tenders, without charge;
- c) for Defence Purposes, without charge;
- d) for Security Purposes, without charge;
- e) for Government Purposes on fair and reasonable terms.

If the contributing Member(s) intend to use or have used the Foreground Information for Government Purposes, prior agreement of terms, either before placing the Contract or after, must be reached with the Contractor before the Foreground Information is used. In all cases, however, the Contracting Authority shall undertake that the contributing Member will require the intended recipient of the Foreground Information to sign a confidentiality agreement before the Foreground Information is disclosed should the Contractor require it.

17.6.3 The Contractor shall not enter into any agreement or arrangement that will result in a limitation of the rights granted under Article 17.6.2 without prior written agreement of the Contracting Authority, who shall take into account the representation of the Contractor.

17.7 Disclosure and Use of Background Information

Disclosure

17.7.1 Subject to the rights of Third Parties and any applicable security regulations and other national procedures and regulations, the Contracting Authority shall, on request and without charge, promptly undertake to make available to the Contractor all Background Information in its possession or control and in the possession or control of a contributing Member necessary for the performance of the Contract.

17.7.2 Subject to the rights of Third parties, upon request by the contracting Authority, the Contractor shall secure in a timely way and make available to the contributing Members Background Information that is necessary for the use of the results⁷ arising from the Contract. The Contractor and the Agency will establish, and update as necessary, a list of such Background Information to be annexed to the Contract which will be made available to the contributing Members. The terms for any use of the Background Information are set out in Article 17.7.3

Use

⁷ For the purpose of Article 17.7.2 and 17.7.3 the term “results” is to be understood to cover Foreground Information only.

17.7.3 Subject to any pre-existing rights in the Information, and subject to any specific limitations on the use of the Information, the contributing Members may use received Background Information or have it used as follows:

- a) for information and evaluation of the Foreground Information arising from the contract and for the purpose of performing work under the relevant PA, without charge;
- b) for disclosure with Foreground Information for tender purposes, without charge;
- c) for using Foreground Information for Defence Purposes, other than a) and b) above, on fair and reasonable terms;
- d) for using Foreground Information for Security Purposes, other than a) and b) above, on fair and reasonable terms;
- e) for using Foreground Information for Government purposes not covered in subparagraphs a) - d) above, on fair and reasonable terms

17.8 Notice of Use of Information

17.8.1 The Contracting Authority shall undertake that in the event of an intention by a contributing Member to issue to any contractor or potential contractor or other Third Party any received Foreground Information or received Background Information, or both, the contributing Member will give to the Contractor thirty (30) Days' prior written notice of that intention.

17.8.2 During the thirty (30) Days the Contractor may make representations in respect of that intention, including representations relating to its business interests, and may make proposals for the protection of the received Foreground Information or received Background Information, or both.

17.8.2.1 The contributing Member will be entitled to issue the Information in respect of received Foreground Information for:

- f) for information and evaluation;
- g) for the purpose of issuing tenders;
- h) for Defence Purposes, and
- i) for Security Purposes,

after expiry of the thirty (30) Days but:

- i) if the Contractor has made no representations, the contributing Member will require the intended recipients to sign the Confidentiality Agreement (Annex);
- ii) if the Contractor makes proposals which are agreed to by the contributing Member, then the contributing Member will proceed in accordance with those proposals; and
- iii) should the contributing Member decide to issue the Information contrary to the representations of the Contractor, that contributing Member will, as a minimum, ensure that the intended recipients have signed the Confidentiality Agreement (Annex).

17.8.2.2 The contributing Member shall be entitled to issue the Information in respect of received Foreground Information intended for use for a particular Government Purpose, only after agreement of terms for that use is reached with the Contractor. The contributing Member shall as a minimum, ensure that the intended recipients have signed the Confidentiality Agreement (Annex).

17.8.2.3 The contributing Member shall be entitled to issue the Information in confidence in respect of received Background Information for:

- a) information and evaluation of the results of the work done under the Contract, without charge;
- b) disclosure of Information for tender purposes, without charge;

after expiry of the thirty (30) Days but:

- i) if the Contractor has made no representations, the contributing Member will require the intended recipients to sign the Confidentiality Agreement (Annex);
- ii) if the Contractor makes proposals which are acceptable to the contributing Member, then the contributing Member will proceed in accordance with those proposals; and
- iii) should the contributing Member decide to issue the Information contrary to the representations of the Contractor, that contributing Member will, as a minimum, ensure that the intended recipients have signed the Confidentiality Agreement (Annex).

17.8.2.4 The contributing Member shall be entitled to issue the Information in confidence in respect of received Background Information for use for a particular Defence Purpose or Security Purpose, if after three (3) months from expiry of the notice, referred to in Article 17.8.1, the contributing Member has made a fair and reasonable offer to the Contractor, provided that negotiation for the agreement of fair and reasonable terms for that use continue in good faith.

17.8.2.5 The contributing Member shall be entitled to issue the Information in confidence in respect of received Background Information for use for a particular Government Purpose, only after agreement of terms for that use are reached with the Contractor. The contributing Member shall as a minimum, ensure that the intended recipients have signed the Confidentiality Agreement (Annex).

17.9 Future Contracts

17.9.1 The Contracting Authority shall use its best efforts that in the event that any contributing Member in exercising its right of use under Articles 17.6.2 or 17.7.3 or both:

a) proposes to place a contract for further Research & Technology work employing Foreground Information or Background Information, or both; or

b) proposes to employ Foreground Information or Background Information, or both, in development, production or support;

the contributing Member concerned will, where national law permits, give the Contractor, if it is capable of doing so, the opportunity to bid for work that is part of the proposed use.

17.10 Commercial exploitation

17.10.1 Subject to the rights of Third Parties, the Contracting Authority will undertake that each contributing Member, if that contributing Member is capable of doing so, grants to the Contractor a non-exclusive licence on fair and reasonable terms to use that contributing Member's Background Information necessary for the use of the Foreground Information.

17.10.2 Subject to any restriction set out in this Contract, the Originator shall have the right to exploit any of its Foreground Information free of any payment to the contributing Members or the Contracting Authority.

ARTICLE 18 - INFORMATION TO BE HELD IN CONFIDENCE

18.1 The Parties:

- a) shall treat in confidence all Information it receives from the other;
- b) shall not disclose any of that Information to any Third Party unless so authorised in writing by the other Party and subject then to securing an enforceable confidentiality undertaking implementing the terms of that authorisation, except that:
 - i) the Contractor may disclose Information in confidence, without prior authorisation, to Sub-contractors and to the extent necessary for the Purposes of the Contract; and
 - ii) the Contracting Authority may disclose Information in confidence, without prior authorisation, to any contributing Member, subject to the obligations of confidence and other provisions applicable to the Contracting Authority under this Article 18, to the extent necessary for the Purposes of the Contract. The Contracting Authority will ensure that contributing Members accept the same obligations and other provisions.
- c) shall not use any of that Information otherwise than for the Purposes of the Contract; and
- d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.

18.2 The Parties shall take all reasonable precautions necessary so that all Information disclosed to one of them, by or on behalf of the other, under or in connection with this Contract:

- a) is protected from unauthorised access and loss;
- b) is disclosed to its employees and used by them only to the extent necessary for the Purposes of this Contract; and
- c) is treated in confidence by those employees and not disclosed to others without prior written authorisation, except as provided in Article 18.1 b) i) and ii).

18.3 The Parties shall each ensure that their employees are aware of their respective arrangements for discharging the obligations at Articles 18.1 and 18.2 before they receive Information and take steps as may be reasonably practical to enforce those arrangements.

18.4 Articles 18.1 and 18.2 shall not apply to any Information to the extent that either Party:

- a) exercises rights of use or disclosure granted otherwise than as a consequence of, or under the Contract, e.g. by statutory provisions; or
- b) has the right to use or disclose the Information in accordance with other conditions of the Contract; or

- c) can show:
 - i) that the Information was or has become published or publicly available for use, except when in breach of any provision of the Contract or any other agreement between the Parties; or
 - ii) that the Information was already known to the receiving Party (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract; or
 - iii) that the Information was received without restriction on use or further disclosure from a Third Party who lawfully acquired it and who himself is under no obligation preventing its use or disclosure; or
 - iv) from its records that the same Information was derived independently of Information received under or in connection with the Contract provided the relationship of that Information to any other disclosed Information is not revealed.

18.5. Nothing in this Article shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence. Where either Party requests from the other written confirmation of any oral disclosure made by the other or by a contributing Member, that request shall not unreasonably be refused.

18.6 Whenever Information is disclosed under the Contract the following applies:

- a) The disclosing Party shall mark that Information with a proprietary legend in which the owner of the rights shall be identified; and with an appropriate legend identifying the Information as Foreground or Background, and with the security classification.
- b) The receiving Party shall not remove any marking properly applied to Information referred to in Article 18.6 a) and perpetuate the marking on any copies it makes of the Information, and require any Third Parties to whom the Information is provided to preserve that marking on all copies.

ARTICLE 19 - DISPUTES

- 19.1 In the event of any disagreement or claim between the Parties relating to this Contract (collectively referred to as a “dispute”), the Parties will attempt to settle such a dispute by the following three steps.
- 19.2 The Parties agree that they first will try to solve all disputes by negotiation, and shall attempt to resolve the dispute(s) within thirty (30) Days of the dispute being notified by one Party to the other. Such period may be extended by written agreement of the Parties.
- 19.3 If the Parties cannot resolve a dispute between themselves, the Parties will appoint an independent Conciliator to offer solutions to resolve the dispute. If the Parties cannot agree upon the identity on the Conciliator or if Conciliation does not produce a resolution of the dispute, the matter will be settled by arbitration in accordance with Articles 19.4 to 19.9 below. Where a Conciliator is appointed, the Conciliator will attempt to resolve the dispute through close consultation between the Parties, as necessary. Within thirty (30) Days after appointment, the Conciliator will provide a written report to both Parties on a possible outcome, such outcome being non-binding on the Parties. The Parties will reach a view on whether or not Conciliation has succeeded, each notifying its view to the other within twenty (20) Days of receiving the report. Each Party will cover its own expenses and the expenses of the Conciliator in equal proportions.
- 19.4 Any dispute, controversy, or claim arising out of or relating to this Contract, or the breach, termination, or invalidity thereof, which could not be settled by the Parties by negotiation or conciliation, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this Contract. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The number of arbitrators shall be three except if the Parties in dispute agree, within fifteen Days after the receipt by the respondent of the notice of arbitration, that there shall be only one arbitrator. The place of arbitration shall be Brussels. The language to be used in the arbitral proceedings shall be English.
- 19.5 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator (if any) will have to be of a nationality different from the nationality of the other two members of the Tribunal.
- 19.6 Any arbitrator must be of the nationality of one of the cM of the Agency and shall be bound by the rules of security in force within the Agency.
- 19.7 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the members of Agency or of the cM, be bound by the rules of security in force within Agency; if he is of another nationality, no EU classified documents or Information shall be communicated to him.
- 19.8 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in Article 19.4 above.

- 19.9 The awards of the Arbitration Tribunal will be final and binding. There shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses and the Parties' costs.

ARTICLE 20 - SUSPENSION AND TERMINATION

20.1 Termination for convenience

20.1.1 The performance of work under this Contract may be terminated, in whole or in part, at any time by the Contracting Authority in accordance with this Article 20.1.

20.1.2 Any such termination shall be effected by delivery to the Contractor of a written notification of termination referring to Article 20.1.1 and specifying the extent to which performance of work under this Contract is to be terminated and the date on which such termination becomes effective, for which purpose no less than fifty (50) Days' notice shall be given.

20.1.3 As promptly as possible, but in any event no later than sixty five (65) Days from the effective date of termination, the Lead Contractor shall submit to the Contracting Authority its termination claims.

20.1.4 The Contractor will be paid fair and reasonable prices for all work performed under this Contract up to the date of termination and other reasonable costs allocable to the Contract and incurred as a result of the termination. The following can be recovered:

a) The amounts the Contractor already has a contractual right to in accordance with Annex – Pricing and Payments for work performed; and

b) All expenditure the Contractor has incurred in connection with material or other relevant orders (e.g. software licences) already ordered before the notification of termination that cannot be terminated without costs; and

c) All necessary expenses caused on the Contractor as a direct consequence of the termination; and

d) Other reasonable related costs and expenses.

However, in the event the Contractor has not taken all reasonable steps to minimise the costs and / or expenses mentioned under a) to d) above, the Contracting Authority can not be obliged to pay any sums in excess of those which the Contracting Authority would have paid had the Contractor taken reasonable steps. The Contracting Authority reserves the right to verify the termination claims or have these verified by a governmental authorised representative.

20.1.5 The total sum of the reimbursement of costs, as referred to in Article 20.1.4, shall be settled through negotiation and agreed in the protocol mentioned in Article 20.1.6. In any case, the Contracting Authority shall not be liable to pay under this Article any sum which, when taken together with any sums paid or due or becoming due to the Contractor under this Contract, shall exceed the total price payable under this Contract.

20.1.6 The Parties agree that a protocol shall be produced as a result of negotiations to show how much of the terminated work has been produced. This will be based upon the Annex - Progress and Milestone plan.

20.1.7 For the terminated part, the Contractor shall transfer the Deliverable or the related work in progress as-is when the termination becomes effective. This includes all design- or otherwise related documentation concerning the Deliverable or the related part of it. This applies except for such work in progress that the Contractor, with the concurrence of the Contracting Authority, elects to retain which shall be reflected in the reimbursement of costs.

20.1.8 If the Contracting Authority wishes to terminate a part of the Contract in accordance with Article 20.1.1, but intends to use the dedicated resources to follow a new path within the scope of this Contract, then the Parties will renegotiate such change, taking into account the principles in Article 20.1 and Article 10.

20.2 Termination for default

20.2.1 After the Contracting Authority has issued written warnings that the Contractor's actions or omissions could be considered to constitute a serious breach to this Contract, then the Contracting Authority may, without prejudice to its other rights, terminate for default this Contract in whole or in part if:

- a) the Contractor substantially fails to perform the work under this Contract; or
- b) performance is delayed by more than 25% of the time from the start of work until the due date for delivery, as specified in the Contract or any extension thereto; or
- c) the Contractor becomes insolvent or is unable to pay his debts;

and the Contractor after a thirty five (35) Days' notice from the Contracting Authority cannot produce a valid plan to rectify this in an appropriate way within reasonable time.

20.2.2 Termination as per Article 20.2.1 shall be through delivery to the Lead Contractor of a written notification of termination specifying the reason for termination and the date on which the termination shall become effective.

20.2.3 If this Contract is terminated under these provisions, the Contracting Authority may require the Contractor to deliver to its authorised representatives, and as directed by the Contracting Authority any partially completed work specifically produced or acquired for the purpose of this Contract.

20.2.4 In the event of termination under these provisions, the Contracting Authority shall authorise payment for any work completed before termination, which was accepted. The Contracting Authority shall also authorise payment of an amount agreed between the Parties for completed work in respect of which no separate price is stated and for any partially completed work taken over. No other obligation for payment to the Contractor under this Contract shall otherwise arise.

20.2.5 Termination does not preclude the Contracting Authority the right for compensation in accordance with Article 22.

20.3 Suspension

20.3.1 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.

ARTICLE 21 - HEALTH, SAFETY AND ENVIRONMENTAL ISSUES

- 21.1 The Contractor is responsible for ensuring that the Deliverables satisfy any applicable requirement and regulation relevant to the Deliverable at the time of the signing of the Contract. This also applies to such requirements and regulations applicable at the time of delivery, which the Contractor knew of, or should have known of, at the time of the signing of the Contract.
- 21.2 The Contractor shall in addition inform the Contracting Authority in a timely manner of any new requirement applicable to the Deliverables and which is not comprised by Article 9.1.
- 21.3 The Contracting Authority reserves the right to verify application of these standards by relying on the contributing Members national competent authorities.

ARTICLE 22 - LIABILITY

22.1 General

22.1.1 Except in the case of gross negligence or wilful misconduct by or on behalf of the Contracting Authority, the Contractor shall be liable for any loss of or damage to property, including Government facilities up to the Contract amount and any death or injury to personnel of the Government caused by the Contractor, his personnel, agents or Sub-contractors.

22.2 Contractor's property at a Government Establishment

22.2.1 All property of the Contractor at a Government establishment shall be at the risk of the Contractor, unless the Government has formally agreed in writing to accept responsibility for custody of such property.

22.3 Liability towards Third Parties

22.3.1 Unless otherwise specified in this Contract, except its Annexes, the Contractor shall hold the Contracting Authority and relevant contributing Members harmless and indemnify them from all and any claims made by Third Parties and from all expenses in connection with such claims arising out of a liable act or omission of the Contractor, the Contractor's employees, or of any other person or entity for which the Contractor is liable.

22.4 Contractual Liability

22.4.1 Unless otherwise specified in this Contract, except its Annexes, the Contractor is liable towards the Contracting Authority as well as towards any of the contributing Members for any direct and foreseeable loss or damage to them as a result of a liable act or omission by him, his employees or of any person or entity for which he is liable. Except in the event of gross negligence or wilful misconduct, the total liability of the Contractor under this Contract will not exceed the total price of the Contract.

ARTICLE 23 - SECURITY AND VISITS

23.1 Security

23.1.1 The highest security classification for the programme pursuant to this Contract is [Proposal section A 7] The Contractor is responsible for obtaining the appropriate security clearance for its employees who are designated to participate in the execution of this Contract.

23.1.2 The Contractor shall comply, under penalty of termination for default of the Contract, with all measures prescribed by the Security Authority of the Agency for the safeguarding of classified Information entrusted to, or generated by, the Contractor, including but not limited to those detailed in the EU Council Security Regulations 2011/292/EU and any supplements or amendments thereto [and to the Security Aspects Letter in Annex].

23.1.3 All classified Information received by the Contractor or developed through, or in connection with, the work to be performed under this Contract shall be disseminated by the Contractor only through the channels authorised by the Security Authority of the Agency.

23.1.4 The Contractor shall, except for those Sub-contractors named in Annex – Contractor and approved Sub-contractors, award classified sub-contracts only to Sub-contractors upon prior written consent of the Contracting Authority, and shall co-ordinate with the Contracting Authority any security provisions to be agreed upon in that sub-contract.

23.1.5 For Norway, the rules and modalities governing all provision or exchange of Information under this Programme will be consistent with the Agreement between the Kingdom of Norway and the EU on the Security Procedures for the Exchange of classified Information

23.2 Visits

23.2.1 All visiting personnel will comply with the security regulations of the host. Any Information, materials or equipment disclosed or made available to visitors will be treated as if supplied to the contributing Member sponsoring the visiting personnel.

23.2.2 Requests for visits by personnel of a contributing Member to a facility of the Contractor will conform to the established visit procedures of the host. Requests for visits will bear the name of the Contract and any subsidiary document (such as a project annex) that are applicable to the visit. Such requests will be submitted in accordance with normal International Visit Control Procedures as described by the EU Council Security Regulations 2011/292/EU.

23.2.3 Lists of personnel of each contributing Member required to visit facilities of the Contractor on a continuing basis will be submitted through official channels.

ARTICLE 24 - NOTICES AND AUTHORISED REPRESENTATIVES

- 24.1 Where a Party to this Contract is obliged or entitled to give any notice, request, approval, demand, consent, direction or other communication (herein generically called “Notice”), such Party shall communicate the substance as expeditiously as possible, but Notice shall not be sufficiently given until sent in writing. Any Notice may be delivered personally or sent by registered mail (including the use of couriers) or digital verified email and will be effective upon receipt by the addressee.
- 24.2 Notices to the Contracting Authority shall be sent to:
The European Defence Agency
Rue des Drapiers 17-23
1050 BRUXELLES
BELGIQUE
Attention: [CS Director]
- 24.3 Notices to the Agency Security Authority shall be sent to:
The European Defence Agency
Rue des Drapiers 17-23
1050 BRUXELLES
BELGIQUE
Attention: [Head of the Security Unit]
- 24.4 Notices to the Contractor shall be sent to:
Add Lead Contractor name
Address: Insert
Attention: Insert
- 24.5 The above addresses and the information relating to the technical and commercial points of contact listed in Annex-Contractor and Approved Sub-contractors may be changed by Notice.

ARTICLE 25 - GRATUITIES AND AGENTS' FEES

- 25.1 The Contractor warrants that no bribe, gift or other inducement has been paid, given, promised or offered to any official or employee of the Contracting Authority or any other person for or with a view to obtaining this Contract. Further that he has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage, or contingent fee, except bona fide commercial or selling agents maintained by the Contractor for the purpose of securing business.
- 25.2 The discovery of any breach of this warranty shall entitle the Contracting Authority to terminate this Contract for default in accordance with Article 20, and to recover from the Contractor the amount of any loss resulting from such termination and/or to recover from the Contractor the amount or value of any such bribe, gift or other inducement.

ARTICLE 26- LAW APPLICABLE TO DISPUTES ARISING FROM THIS CONTRACT

26.1 In the event of a dispute, this Contract will be examined and construed in the light of Belgian Contracting Law.

ARTICLE 27 - SPECIAL PROVISIONS

[to be completed as appropriate]

ARTICLE 28 - LANGUAGE

- 28.1 This Contract is established in the English language.
- 28.2 All correspondence, notices, reports, technical Information, manuals and other written documentation required by this Contract shall be in the English language.
- 28.3 All notices and correspondence between the Contractor and the Contracting Authority shall be in the English language.

ARTICLE 29 - OTHER PROVISIONS

- 29.1 This Contract constitutes the entire agreement between the Parties with respect to the subject matter and supersedes any and all prior communications, negotiations, representations and understandings, written or oral, by and between the Parties with respect to the subject matter.
- 29.2 Terms and conditions of the Contract such as but not limited to: Articles 14, 17, 18, 19, 22, 23, 24, 26 shall remain in effect beyond completion or any cancellation or termination of this Contract.
- 29.3 The failure by one of the Parties to exercise or enforce any rights in this Contract shall not be deemed to be a waiver of such rights nor to bar the exercise or enforcement of such rights at any time or times thereafter, unless expressly agreed otherwise in writing.

29.4 Export licence:

It shall be the responsibility of the Contractor to apply and take all reasonable steps to ensure success in promoting all the necessary actions directed at obtaining from the relevant cM Government(s) in a timely manner any import/export licenses and import/export documentation required to perform any of its obligations under the Contract.

A cM Government failure, decision, absence of decision or refusing to grant, on the ground of the existing law, an export licence or export permit or cancelling an export licence or export permit that has been issued shall be deemed to constitute a force majeure, provided that the Contractor has made its best efforts to obtain the required export licence or permit.

- 29.5 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. In the absence of the authorisation referred to in the article above, 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 30 - EFFECTIVE DATE OF THE CONTRACT

- 30.1 This Contract shall come into effect on the day after the Contract has been signed by or on behalf of the Contracting Authority, unless otherwise agreed and confirmed in writing by the Contracting Authority.

ARTICLE 31 - OPTIONS

- 31.1 The Contractor undertakes to deliver material and services as specified in Annex – Options if the Contracting Authority wishes to exercise the Option(s). The Option(s) will be released in accordance with Annex – Options. If and to the extent applicable, the terms and conditions of this Contract will apply correspondingly.

In witness whereof the Parties have executed this Contract, in [...(...)] identical original copies, as witnessed by the signatures of their duly authorised representatives.

On behalf of the Agency,
[name]

On behalf of the Contractor,
[name]

(signature)

(signature)

Place: on

Place: on

ANNEX – SECURITY ASPECTS LETTER (where applicable)

Intentionally left blank.

ANNEX – STATEMENT OF WORK

I. R&T Excellence

[Proposal section C 2]

II. Management

[Proposal section C 3]

III. Value for Money

[Proposal section C 4]

IV. Cooperation

[Proposal section C 5]

V. Consortium

[Proposal section B4, B7a), B7f), B6]

VI. Work Plan

[Proposal section C 6]

VII. Work Package Details

[Proposal section C 7]

ANNEX – PRICING AND PAYMENTS

PRICES

Entity (Lead = 1.)	Entity Contribution (EURO including taxes)	CEDS-FSP Contribution (EURO including taxes)
Proposal A14	Proposal A14 vi	Proposal A14 vii
1. [Participant 1]	[amount in figures]	[amount in figures]
2. [Participant 2]	[amount in figures]	[amount in figures]
...
X. [Participant X]	[amount in figures]	[amount in figures]
Total	[amount in figures]	[amount in figures]

PAYMENT PLAN

Payment Milestone	Milestone Month	Milestone Payments in EURO	
		VAT excluded	VAT included
Proposal C 9 i.	Proposal C9 ii	[amount in figures]	Proposal C 9 iii.
PM 01	[month]	[amount in figures]	[amount in figures]
PM 02	[month]	[amount in figures]	[amount in figures]
...
PM 0X	[month]	[amount in figures]	[amount in figures]
Total		[amount in figures]	[amount in figures]

Total payment under this Contract including taxes:

[INSERT AMOUNT IN LETTERS]

ANNEX – PROGRESS AND MILESTONE PLAN

The PMG will be invited to the kick-off meeting, all progress review meetings, the final meeting, and all other contract related workshops or dissemination events during the lifetime of the contract. The invitation to such meetings or events are considered being contractual deliverables due at the next relevant milestone.

Scheduled	i. No	ii. Title	iii. Type	iv. Lead	vi. Payment Milestone
Specify T0+	Proposal C 8 i.	Proposal C 8 ii.	Proposal C 8 iii.	Proposal C 8 iv	Proposal C 8 vi.
T0+					
T0+					
...

T0= date of kick-off meeting

ANNEX – CONTRACTOR AND APPROVED SUBCONTRACTORS

No.	Contractor	Points of Contacts
1	<Entity> <Mail address>	Technical contact <Name> <Title> <Department> <Tel> <Fax> <E-mail> Commercial/Administrative contact <Name> <Title> <Department> <Tel> <Fax> <E-mail>

No.	Approved Subcontractor	Points of Contacts
2	<Entity> <Mail address>	Technical contact <Name> <Title> <Department> <Tel> <Fax> <E-mail> Commercial/Administrative contact <Name> <Title> <Department> <Tel> <Fax> <E-mail>

No.	Approved Subcontractor	Points of Contacts
X	<Entity> <Mail address>	Technical contact <Name> <Title> <Department> <Tel> <Fax> <E-mail> Commercial/Administrative contact <Name> <Title> <Department> <Tel> <Fax> <E-mail>

ANNEX – OPTIONS

ANNEX – TEMPLATE MODEL CONFIDENTIALITY AGREEMENT¹

THIS CONFIDENTIALITY AGREEMENT (hereinafter referred to as “Agreement”) is made the
[INSERT DAY] day of [INSERT MONTH] [INSERT YEAR] BETWEEN

[insert Holder]

(hereinafter referred to as “the Holder”)² of the one part, AND

[insert Recipient]

(hereinafter referred to as “the Recipient”) of the other part.

On the basis of the following —

- a) The Holder owns certain valuable property and equitable rights in Information identified or referenced in Appendix 1 to this Agreement (afterwards referred to as “the Information”);
- b) The Holder has agreed, by contract or otherwise with the [specify Authority] (hereinafter referred to as “the Authority”)³ that Information may be disclosed to the Recipient in order that the Recipient may, for the purposes of the Authority, [specify]⁴. The Authority has agreed that these disclosures will only be made to Third Parties who have signed an appropriate confidentiality agreement with the Holder;
- c) The Recipient is willing to receive and hold the Information subject to the terms of this Agreement;

the Parties to this Agreement agree that in consideration of the disclosure of Information by the Holder or the Authority to the Recipient:

1. The Recipient shall, subject to the following provisions of this Agreement, hold the Information under conditions of strict confidence, protect from unauthorised access and loss and not use, copy, or disclose to other than the Authority, the Information in whole or in part in any manner or form for other than the sole purpose of enabling the Recipient to [specify].
2. The Recipient may disclose the Information only to those of its officers and employees as need to know the Information for the purposes set out in paragraph 1. If the Recipient needs to disclose the Information to potential sub-contractors the Recipient shall first inform the Authority and the Holder for approval, obtain from the potential sub-

¹ See Article 17.8.2 of the contract

² Here identify the full name and address of the Holder. The Holder will be the Contractor concerned, who will have arranged the right to sign for all owners. The Holder may also be the owner of the Information. In the event that only part of the Information resulting from the Contract is to be used, then signature of the owner(s) of that part of the Information, is required.

³ Here identify the Contracting Authority or the contributing Member concerned.

⁴ Here insert as appropriate a) respond to Invitation to Tender No.... (“the ITT”), or b) evaluate and assess the Information, or c) perform work under a contract.

contractor a signed agreement in the same form as this Agreement, and forward it promptly to the Holder for signature.

3. The restrictions and obligations in paragraphs 1 and 2 shall not apply to any of the Information that the Recipient can show:
 - a) is already known to the Recipient (without restrictions on disclosure or use) prior to its disclosure to the Recipient directly or indirectly from the Authority or the Holder; or
 - b) is received by the Recipient without any obligation of confidence from a Third Party having a right to disclose it; or
 - c) has been generated independently by the Recipient; or
 - d) is in or enters the public domain, except by breach of this, or another, undertaking;

provided the relationship to the remainder of the Information is not revealed.

4. In respect of Invitations To Tender (ITT), the Recipient shall return to the Authority all the Information, and any copies of it, promptly upon being notified that the Recipient's bid has been unsuccessful or in the event that the Recipient decides not to respond to the Invitation to Tender, becomes unable to respond to the Invitation to Tender, or withdraws its Tender after submission.
5. In the event that the Recipient is awarded the contract, as a result of its response to the ITT or by another procedure of awarding the contract, the Recipient agrees that the terms of this Agreement shall apply to the Information disclosed (and any amended or extended versions of it) to the Recipient under the contract supplemented only by those requirements in the contract that relate to the use of the Information by the Recipient for the duration of the contract.
6. On completion or termination of the [specify] the Recipient shall promptly return to the Authority the Information, and any copies of it, when this Agreement shall then terminate except for the restrictions and obligations in paragraphs 1 and 2.
7. The provisions of this Agreement shall be in addition to and not in substitution for any obligation of confidence, whether arising under contract or otherwise, between the Recipient and the Authority (or the Holder if applicable) in respect of the Information.
8. This Agreement does not include, constitute or imply any transfer, assignment or licence or rights in any Information, whether or not identified in Appendix 1, owned by the Holder, other than that specified in paragraph 1.
9. The Recipient acknowledges that the Information is disclosed to the Recipient by or on behalf of the Authority on the basis that the Holder shall have no liability to the Recipient arising from any use of the Information by the Recipient and the Recipient will bring no claim against the Holder in relation to the Information or any use of it.

10. 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; 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.
11. This Agreement (including Appendix 1) sets out the entire agreement between the Holder and the Recipient in connection with the subject matter of this Agreement. However, nothing in this Agreement shall affect the rights or obligations of either party in relation to the Authority in respect of the Information.
12. 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.
13. This Agreement is made subject to⁵ [specify] law and to the exclusive jurisdiction of the⁶. [specify] courts, and shall be effective as from the date of signature by the Recipient, and despatch to the Holder.

Signed on behalf of the Recipient by:
[name]
In the capacity of:
[capacity]

Signed on behalf of the Holder by:
[name]
In the capacity of:
[capacity]

(signature)

(signature)

Date:

Date:

⁵ Insert the jurisdiction of the country of residence of the Holder.

⁶ Insert the country of residence of the Holder.

APPENDIX 1 TO CONFIDENTIALITY AGREEMENT