

DRAFT SERVICE CONTRACT

12.CAP.OP.388

“Home Explosive training”

The European Defence Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by [name in full, function], with offices at Rue des Drapiers 17-23, B-1050 Brussels, Belgium,

of the one part,

and

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

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

of the other part,

hereinafter collectively referred to as “the contracting parties” or “the parties”,

HAVE AGREED

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

- Annex I** – Terms of Reference Ref. No 12.CAP.OP.388 “Home Made Explosives (HME) Training”
- Annex II** – Contractor’s Technical and Financial Proposals Ref. No
- Annex III** – Security Aspects Letter (SAL)

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

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1. The subject of the Contract is the delivery by the contractor of a Home Made Explosives (HME) Training.
- I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications and technical proposal annexed to the Contract (Annexes I and II).

ARTICLE I.2 – DURATION

- I.2.1. The Contract shall enter into force on the date on which it is signed by the last contracting party. It shall remain in force until it is either totally performed by the Contractor or until its termination pursuant to the provisions below.
- I.2.2. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3. Execution of the tasks shall start from the date of entry into force of the Contract and shall respect the periods and dates specified in Annex 1. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1. The maximum total amount to be paid by the Agency under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.
- I.3.2. The total amount referred to in the above paragraph shall be fixed and not subject to revision.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

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

- I.4.1. Pre-financing: Not applicable
- I.4.2. Interim payment: Not applicable
- I.4.3. Payment of the balance:

The Agency shall have twenty days from execution of the contract to approve or reject the services.

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

Within 30 (thirty) days of the date on which the Agency receives an admissible payment request accompanied by a copy of the relevant acceptance certificate, payment of the balance corresponding to up to 100% of the applicable amount referred to in Article I.3.1 shall be made.

Invoices shall be submitted to the following address:

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

Prices shall be set taking into account that the European Defence Agency is exempt from custom duties, indirect taxes and sales taxes, in particular from value-added tax (VAT). The Contractor shall mention on its invoices "*Exonération de la TVA, article 42 § 3.3 du Code de la TVA*".

ARTICLE I.5 – BANK ACCOUNT

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

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

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

Communications shall be sent to the following addresses:

Agency:

Agency:

Mr/Mrs/Ms [complete]
[Function]
European Defence Agency
Rue des Drapiers 17-23
B-1050 Brussels

Contractor:

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

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1.** The Contract shall be governed by European Union law, complemented, where necessary, by the national substantive law of Belgium.
- I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed solely for the purposes of the performance, management and follow-up of the Contract without prejudice to possible transmission to the Agency's internal auditor or to the College of Auditors, for the purposes of safeguarding the Agency's financial interests.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

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

ARTICLE I.10 – SECURITY

The Contractor recognises that the Agency is subject to the Council's security regulations set out in Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information.

- I.10.1.** The Contractor shall - under penalty of termination of the Contract - comply with any security requirements prescribed by the Agency as detailed in the Security Aspects Letter attached to the Contract and any amendment or supplement thereto.
- I.10.2.** The Contractor shall ensure that the security requirements are complied with by any sub-contractors, where appropriate.
- I.10.3.** If there are changes of security requirements emerging during the performance of the Contract and such changes are of such nature that they significantly deviate from the initial arrangements the contract shall be amended accordingly or terminated, as appropriate.
- I.10.4.** Where changes of security requirements result in additional security measures to be taken or investments to be made by the Contractor, a contract amendment shall be negotiated on a fair and reasonable basis.
- I.10.5.** In case the Contractor cannot comply with increased security requirements, the contract shall be terminated. However, any contract termination resulting from changes of security requirements shall not be by default of the Contractor, and the Contractor shall be entitled to a fair compensation.
- I.10.6.** Should the Contract or the Specifications require one or more of Contractor's employees, directors, agents, representatives or subcontractors (to the extent authorised), to have a valid security clearance in force, the Contractor shall not start or authorise the commencement of the tasks under the Contract before such persons

have such a security clearance in force. The Contractor shall forthwith inform the Agency (attn : Security Officer) (i) that the persons involved in the performance of the Contract who need a security clearance have obtained it, together with a copy thereof; (ii) if the security clearance of persons involved in the performance of the Contract has been withdrawn or suspended whereupon the Contractor shall immediately withdraw such person from the team working on the Contract. The Contractor shall as soon as possible inform the Agency of the measures it intends to take in order to guarantee continuous performance of the Contract, in particular replacing the person(s) by (a) person(s) fulfilling the same requirements as specified in the Contract.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

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

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

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

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

ARTICLE II.2 – LIABILITY

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

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

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

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

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

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

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

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

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

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

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

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

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

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

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

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

ARTICLE II.6 – RECOVERY

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

ARTICLE II.7 - REIMBURSEMENTS

- II.7.1.** Where provided by the Special Conditions or by Annex I, the Agency shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3.** Travel expenses shall be reimbursed as follows:
- a)** travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
 - b)** travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
 - c)** travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
 - d)** travel outside Community territory shall be reimbursed under the general conditions stated above provided the Agency has given its prior written agreement.
- II.7.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:
- a)** for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
 - b)** daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
 - c)** daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
 - d)** daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.
- II.7.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Agency has given prior written authorisation.

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

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Agency, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9 – CONFIDENTIALITY

II.9.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.10.1. The Contractor shall authorise the Agency to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

II.10.2. Unless otherwise provided by the Special Conditions, the Agency shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Agency.

II.10.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Agency and shall mention the amount paid by the Agency. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency's official position.

II.10.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Agency has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

II.11.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.11.2. The Contractor recognises that the Agency has been granted exemption from taxes and duties, including value added tax (VAT), pursuant to the provisions of the Decision of the Representatives of the Governments of the Member States, Meeting Within the Council, of 10/11/2004 on the privileges and immunities granted to the European Defence Agency and to its staff members.

- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

- II.13.1.** The Contractor shall not subcontract without prior written authorisation from the Agency nor cause the Contract to be performed in fact by third parties.
- II.13.2.** Even where the Agency authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Agency under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.13.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Agency is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

- II.14.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Agency.
- II.14.2.** In the absence of the authorisation referred to in Article II.14.1, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Agency.

ARTICLE II.15 – TERMINATION BY THE AGENCY

II.15.1. The Agency may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (e) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Agency's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Agency;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.15.2. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.15.3. Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

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

II.15.4. Consequences of termination:

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

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

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

ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

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

ARTICLE II.16 – LIQUIDATED DAMAGES

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

ARTICLE II.17 – CHECKS AND AUDITS

II.17.1. Pursuant to Article 43 of Council Decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency, the College of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the Agency's budget from signature of the Contract up to five years after payment of the balance.

II.17.2. The Agency or an outside body of its choice shall have the same rights as the College of Auditors for the purpose of checks and audits limited to compliance with

contractual obligations from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

For the Agency,
[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [], [date]

Done at [Brussels], [date]

In duplicate in English.

ANNEX I

TERMS OF REFERENCE

ANNEX II

CONTRACTOR'S TECHNICAL AND FINANCIAL PROPOSALS

ANNEX III

SECURITY ASPECTS LETTER

- (1) The performance of the Contract will involve national or EUCI up to the level of **RESTREINT UE/EU RESTRICTED** or its national equivalent.
- (2) All Contractor's personnel as well as sub-contractors' personnel involved in work under this Contract shall hold the nationality of an EU Member State unless otherwise agreed in advance with EDA.
- (3) For the purpose of this Security Aspects Letter the following definitions shall apply:
 - a. **'EU classified information' (EUCI)** means any information or material designated by an EU security classification, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the European Union or of one or more of the Member States.;
 - b. **'National Classified information'** shall mean information provided in connection with the Contract requiring protection in the interest of the originating EU Member State, and which has been applied a national security classification marking as shown in the table of equivalent security classifications in Appendix 1;
 - c. **'Document'** means any recorded information regardless of its physical form or characteristics;;
 - d. **'Material'** means any document or item of machinery or equipment, either manufactured or in the process of manufacture;
 - e. **'Facility Security Clearance' (FSC)** means an administrative determination by an NSA or DSA that, from the security viewpoint, a facility can afford an adequate level of protection to EUCI of a specified security classification level and its personnel who require access to EUCI have been appropriately security cleared and briefed on the relevant security requirements necessary to access and protect EUCI;.
- (4) All industrial or other entities participating in classified contracts which involve access to information classified CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET must hold a national FSC. The FSC is granted by the NSA/DSA of a Member State to confirm that a facility can afford and guarantee adequate security protection to EU classified information to the appropriate classification level.
- (5) Classified Information at RESTREINT UE/EU RESTRICTED level shall be handled and protected as described in Appendix 1 to this Annex of the Contract.
- (6) Information generated by the Contractor will require security classification as detailed in Appendix 2 to this Annex of the Contract.
- (7) The Agency reserves the right to request the responsible security authorities to monitor at the Contractor's facilities the implementation of any security requirements as stipulated in this contract.
- (8) If the Contractor's responsible national security authority identifies a failure by the Contractor to observe the security provisions described and regulations referred to under this Annex, and this failure is of such a nature as to result in the withdrawal of the Contractor's Facility Security Clearance (where applicable) to handle classified documents as necessary for the execution of the Contract, the Agency shall have the right to terminate the Contract with immediate effect in accordance with the relevant provisions of the General Terms and Conditions for Contracts awarded by the European Defence Agency, without prejudice to criminal proceedings against the Contractor.
- (9) In case the responsible national security authority has identified such failure to comply with the relevant security regulations by any sub-contractor resulting in the withdrawal of the sub-contractor's Facility Security Clearance (where applicable), the Agency shall be entitled to require the Contractor to terminate the sub-contract with immediate effect,

without prejudice to the Agency's right to terminate the contract with immediate effect and/or to initiate criminal proceedings against the sub-contractor.

- (10) Visits by personnel of the Agency to the Contractor's facilities or by the Contractor's personnel to other contractor's or sub-contractor's facilities or to government establishments required under the performance of the Contract, shall conform with applicable national or international visit procedures established by the host nation.
- (11) For work performed on the Agency's premises, the Contractor and its personnel shall comply with the security requirements as described in Appendix 3 to this Annex of the Contract.
- (12) Notwithstanding the general provisions under Appendix 4 regarding access to the Agency's premises or works to be carried out there by the Contractor's personnel, for any visits by Contractor's personnel to the Agency requiring access to CONFIDENTIEL UE/EU CONFIDENTIAL / SECRET UE/EU SECRET information, an assurance of the visitor's security clearance at the appropriate level shall be provided directly to the Agency's Security Unit prior to the visit taking place.

APPENDIX 1 - Handling and protection of RESTREINT UE/EU RESTRICTED Information

Documents or material containing RESTREINT UE/EU RESTRICTED information, any national classified information of the EU Member States or classified information originated by another international organisation classified at equivalent level, which has been generated or provided in connection with the Contract shall be handled and protected in accordance with the provisions described hereafter unless more stringent handling procedures are prescribed by applicable national security laws and regulations.

The provisions of this document also may be supplemented by specific security provisions applicable to a given multinational project or programme.

1. Access by Personnel

RESTREINT UE/EU RESTRICTED information shall only be made accessible to contractor personnel requiring such information for the performance of the Contract ("Need-to-Know-Principle"). All persons having access to RESTREINT UE/EU RESTRICTED information shall be made aware of their responsibilities for the protection of such information according to these provisions and the consequences of failure to comply.

A Personnel Security Clearance shall not be required.

2. Restrictions on Use and Release to Third Parties

RESTRICTED information furnished to or generated by the Contractor shall not be used for purposes other than those defined by the Contract and shall be released only to EU Government establishments or contractor facilities located in an EU Member State, whose access is necessary in connection with the performance of the Contract or their involvement in activities related to Common Security and Defence Policy (CSDP).

Release to any other government, international organisation or representatives thereof or to contractors not located in an EU Member State requires prior approval by the Agency or the originator, as appropriate.

3. Security Classification and Marking of Documents and Material

RESTREINT UE/EU RESTRICTED documents or material provided to the Contractor shall maintain the security classification markings assigned by the Agency or any other originator of the classified information. Accordingly, copies and reproductions of documents or material shall be assigned the security classification and the marking of the original document or material, if appropriate.

However, documents or material and derivatives and reproductions thereof generated by the Contractor in connection with the Contract shall be classified and marked to identify the RESTREINT UE/EU RESTRICTED information as provided for in the Security Classification Guide or any other guidance on security classification described by the Agency.

Documents (hard copies and electronic files), copies or reproductions thereof containing RESTREINT UE/EU RESTRICTED information will be stamped, typed, printed or written in bold and capital letters at the top and bottom centre of each front cover or cover letter, page, and of all annexes and attachments with the appropriate classification marking as thus:

EXAMPLE –

RESTREINT UE
EU RESTRICTED

N.B. – Both French and English languages should be used for documents classified RESTREINT UE/EU RESTRICTED.

A further caveat should be included on the cover page, in the top right corner of any document bearing all, or some, of the following information, as applicable:

- An annotation that identifies the information as CSDP information,
- A legend reflecting the project / field of activity the information is related to,
- A statement on restriction of use and release, as appropriate.

EXAMPLE –

CSDP
[Project / Study] USE ONLY
Releasable to EDA pMS Governments

Material or computer storage media and other optical, acoustical or electronic recordings containing RESTREINT UE/EU RESTRICTED information shall be marked properly either on the material itself or – if not possible – on the container holding the material in such a manner that any recipient will know RESTREINT UE/EU RESTRICTED information is involved (e.g. by affixing a tag or sticker).

4. Downgrading or Declassification

Documents containing classified information at RESTREINT UE/EU RESTRICTED must not be downgraded or declassified without the prior written consent of the Agency or the originator, as appropriate.

5. Handling and Storage

Documents or computer storage media as well as interim material containing RESTREINT UE information must not be left unattended or handled in a manner that could result in unauthorised access. Such RESTREINT UE/EU RESTRICTED material must be stored in locked desks, cabinets or similar containers or may be secured in locked rooms/offices provided access to the room is restricted only to persons authorised to have access to the information.

During travel the documents or data storage media must remain under the permanent personal custody of the holder and must not be left unattended in hotel rooms or vehicles and not be displayed in public.

6. Reproduction and Destruction

Reproductions of documents or material containing RESTREINT UE/EU RESTRICTED information shall be produced under conditions that can prevent unauthorised persons from gaining access.

Material, including interim material, such as working drafts, shorthand notes or spoilt copies, containing RESTREINT UE/EU RESTRICTED information must be destroyed in a manner to ensure that it cannot be easily reconstructed.

Documents and computer storage media containing RESTREINT UE/EU RESTRICTED information should be reviewed on regular intervals to determine whether they can be destroyed.

To prevent unnecessary accumulation of RESTREINT UE/EU RESTRICTED information, documents or data storage media containing such information, which is superseded or no longer needed, and provided there is no residual interest, should be destroyed as soon as practicable or returned to the originator.

7. Transfer

RESTREINT UE/EU RESTRICTED information shall normally be transferred in a single envelope either by

- Commercial courier services;
- Personal carriage by staff members without formal courier orders.

However, the envelope must not bear a classification marking.

RESTREINT UE/EU RESTRICTED information must not be transmitted by communication systems or via the Internet unless an encryption system is used, which has been properly approved by Council of the EU or the respective EU Member State's security authority.

In exceptional circumstances, telephone conversations, video conferencing or facsimile transmissions containing RESTREINT UE/EU RESTRICTED information may be in clear text, if an approved encryption system is not available at that moment and time is of paramount importance.

8. Use of IT-Equipment

RESTREINT UE/EU RESTRICTED information must be stored on stand-alone computers or dedicated networks accredited for the processing and storage of EUCI, which may only be accessed by staff having a need to know the information.

Laptops storing or processing RESTREINT UE/EU RESTRICTED information must be password protected, should have a hard disk encryption and must not be directly connected to the Internet.

The following minimum security measures must be in place when processing RESTREINT UE/EU RESTRICTED information on IT systems:

- managed access to system and hardware components (up-to-date lists of authorised users, storage in locked rooms);
- proper identification and authentication features (passwords, log-in); positive identification of all users at the start of each processing session;
- Passwords should have a minimum of six (preferably nine) characters and include alphabetical, numeric as well as special characters.
- general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations);
- software versions (floppy disks, CD ROMs) in use must be checked for presence of malicious software or computer viruses before starting work on RESTREINT UE/EU RESTRICTED information;
- removable computer storage media (e.g. floppy discs, compact disks) to be stored as described under Section 5 above;
- proper data backup with secure local or external storage;
- anti-virus software (implementation, with updates, of an acceptable industry standard anti-virus software); such software must be verified at regular intervals to ensure their integrity and correct functioning;
- no use of privately-owned removable computer storage media and software (e.g. floppy disks, compact disks) or other IT hardware like laptops or PCs;
- no direct connection to Internet unless protected by firewall of an acceptable industry standard;
- use of specific software tools designed for proper deletion of data;

- proper instruction on the use of IT systems in place
- proper security monitoring and auditing.

The following events should be recorded:

- a) all log on attempts whether successful or failed;
- b) log off, including time out where applicable;
- c) initial creation, changes or withdrawal of access rights and privileges;
- d) initial creation or changes of passwords.

Such records must be carried out by dedicated IT specialists only and be accessible to authorised personnel only. Copies of such records should be provided to responsible IT Security Staff, as appropriate.

Each page of hard-copy output or removable computer storage media must be marked with the RESTREINT UE/EU RESTRICTED marking.

9. Destruction and Maintenance of IT systems and Equipment

At the end of their life-cycle, or for specific operational reasons, removable computer storage media such as diskettes or compact disks shall be erased, degaussed or shredded.

On fixed data media RESTREINT UE/EU RESTRICTED information must be deleted by overwriting after completion of work unless data is not encrypted by means of approved encryption systems.

If deletion is not possible the data media shall be removed and retained.

External facilities involved in the maintenance or repair work must be obliged, where required on a contractual basis, to comply with the applicable provisions for handling of RESTREINT UE/EU RESTRICTED information.

10. Sub-Contracts involving RESTREINT UE Information

All sub-contractors must be contractually required, under penalty of termination of their contract, to comply with the security requirements for the handling of RESTREINT UE/EU RESTRICTED information as prescribed in this document.

Appropriate statements or supplementary documentation (e.g. "Security Aspects Letter"), identifying the information or those parts of the contract / sub-contract involving RESTREINT UE/EU RESTRICTED must be part of any contractual arrangement.

A Facility Security Clearance shall not be required for contractors/sub-contractors requiring access to RESTREINT UE/EU RESTRICTED information during the performance of contracts/sub-contracts or in pre-contractual stage unless explicitly required under applicable national laws and regulations.

EU Council security may - in co-ordination with the responsible NSA/DSA and on behalf of the Agency - conduct inspections at contractor facilities to verify the implementation of the security requirements for the handling of RESTREINT UE/EU RESTRICTED information.

11. Loss, Unauthorised Disclosure or Violation of Procedures

Holders of RESTREINT UE/EU RESTRICTED information shall investigate all cases in which it is known or there is reason to suspect that RESTREINT UE/EU RESTRICTED information has been lost or disclosed to unauthorised persons. Any cases of loss, unauthorised disclosure of RESTREINT UE/EU RESTRICTED information or any violation of provision described in this document must be reported to EU Member States' NSA's/DSA's concerned, the Agency and/or the originator of the information, as appropriate. Action may be taken by the competent authorities, as deemed necessary.

12. Termination of Contract

All RESTREINT UE/EU RESTRICTED information provided or generated under this Contract shall continue to be protected in accordance with the provisions of this article in

the event of termination of the Contract. Such information shall be destroyed as described in Section 6 and 9 above or shall be returned to the Agency, if requested.

13. Equivalent Security Classification Markings for RESTREINT UE/EU RESTRICTED

The following security classification markings are equivalent:

EDA / EU		RESTREINT UE/EU RESTRICTED	
Country / Organisation	Security Classification	Country / Organisation	Security Classification
Austria	Eingeschränkt	Latvia	Dienesta vajadzībām
Belgium	nota (3) below ¹	Lithuania	Riboto naudojimo
Bulgaria	За служебно ползване	Luxembourg	Restreint Lux
Cyprus	Περιορισμένης Χρήσης Abr: (ΠΧ)	Malta	Ristrett
Czech Republic	Vyhrazené	Netherlands	Dep. VERTROUWELIJK
Denmark	Til tjenestebrug	Poland	Zastrzeżone
Estonia	Piiratud	Portugal	Reservado
Finland	KÄYTTÖ RAJOITETTU BEGRÄNSAD TILLGÅNG	Romania	Secret de serviciu
France	nota (4) below ²	Slovakia	Vyhradené
Germany	VS — NUR FÜR DEN DIENSTGEBRAUCH	Slovenia	Interno
Greece	Περιορισμένης Χρήσης Abr: (ΠΧ)	Spain	DIFUSIÓN LIMITADA
Hungary	Korlátozott terjesztésű!	Sweden³	HEMLIG/RESTRICTED HEMLIG
Ireland	Restricted	United Kingdom	Restricted
Italy	Riservato		

¹ Diffusion Restreinte/Beperkte Verspreiding is not a security classification in Belgium. Belgium handles and protects 'RESTREINT UE/EU RESTRICTED' information in a manner no less stringent than the standards and procedures described in the security rules of the Council of the European Union

² France does not use the classification 'RESTREINT' in its national system. France handles and protects 'RESTREINT UE/EU RESTRICTED' information in a manner no less stringent than the standards and procedures described in the security rules of the Council of the European Union.

³ Sweden: the security classification markings in the top row are used by the Defence authorities and the markings in the bottom row by other authorities.

Appendix 2 - SECURITY CLASSIFICATION GUIDE

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

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

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

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

Any uncertainties concerning security classifications to be applied or any proposals for changes or amendments shall be addressed to the Agency.

Security Classification Guide Contract # 12.CAP.OP.233	
CONTRACT	U
THE CONTRACT DELIVERABLES INCLUDING THE COURSE	up to R-UE/EU-R

Classification Key:

U UNCLASSIFIED
R-UE/EU-R RESTREINT UE/EU RESTRICTED

Appendix 3 - ACCESS TO THE AGENCY'S PREMISES

- (1) The contractor or sub-contractor and its personnel shall comply with the Agency's internal security and safety rules and regulations and shall follow any instructions given by the Agency's security personnel.
- (2) Any failure to comply with the Agency's security or safety instructions may result in access to the premises being denied or the personnel being expelled from EDA premises.
- (3) Unless otherwise agreed with the Agency, contractor or sub-contractor personnel performing work on the Agency's premises, except attendance of meetings with EDA representatives, shall hold the nationality of an EU Member State and shall hold a security clearance at CONFIDENTIEL UE/EU CONFIDENTIAL level or at SECRET UE/EU SECRET level, as required, issued by the Contractor's or sub-contractor's responsible national security authority. The Agency may authorise on a case-by-case basis contractor or sub-contractor personnel to perform work on its premises for whom the security clearance procedure has been initiated or is still in progress.
- (4) In case the required security clearance for the contractor's or sub-contractor's personnel performing work on the Agency's premises is withdrawn or not obtained within a reasonable period of time after award of the contract, this shall be considered as a failure to comply with the Agency's security requirements.
- (5) Any information or material provided to the contractor's or sub-contractor's personnel shall be treated as if supplied officially by the Agency.
- (6) The contractor shall notify the Agency's designated department at least 5 working days in advance with the names, date of birth, nationality together with a certification of the individual's security clearance or a confirmation that the clearance has been initiated, and where appropriate the details of vehicles, of all contractor or sub-contractor personnel temporary performing work on the Agency's premises.
- (7) The Agency shall be entitled to refuse access to its premises to any contractor or sub-contractor personnel without giving justification, as deemed necessary for security reasons.
- (8) Any security-related notices or communication to the Agency shall be addressed to:

European Defence Agency
Security Unit
Rue des Drapiers 17-23
B-1050 Bruxelles

Email: security@eda.europa.eu