



## **FRAMEWORK PARTNERSHIP AGREEMENT**

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| REF. [REFERENCE] |
|------------------|

**ASSOCIATE PARTNER OF THE SESAR JOINT UNDERTAKING**

The **SESAR JOINT UNDERTAKING**,

Hereinafter referred to as "SJU", a joint undertaking within the meaning of Article 171 of the Treaty establishing the European Community, set up by EC Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR),

Located at 100, avenue de Cortenbergh B-1000 Brussels, Belgium,

Represented for the purpose of signing this Agreement by Mr. Patrick KY, its Executive Director.

**OF THE ONE PART,**

**AND**

**[OFFICIAL NAME OF THE PARTNER IN FULL],**

a **[OFFICIAL LEGAL FORM]**, registered under number: **[REGISTRATION NUMBER]**

Located at **[OFFICIAL ADDRESS IN FULL]**,

VAT registration number : **[NUMBER]**,

*[represented for the purposes of the signature of this Agreement by **[NAME IN FULL AND FUNCTION]**,]*

(hereinafter referred to as the “**Partner**”),

*[Or, in case of a selected Partner composed of Consortium Member(s) including the Coordinator or (ii) a selected Partner established as a legal entity and owned by Consortium Member(s).*

**[OFFICIAL NAME OF THE COORDINATOR IN FULL],**

a **[OFFICIAL LEGAL FORM]**, registered under number: **[REGISTRATION NUMBER]**

Located at **[OFFICIAL ADDRESS IN FULL]**,

VAT registration number : **[NUMBER]**,

*Hereinafter referred to as the “Coordinator”, the Partner or [Partner Name] represented for the purpose of signing this Agreement by [name in full and title]*

*Acting in the name and on behalf of the following legal entities, which shall accede to this Agreement as “Consortium Members” in accordance with the procedure referred to in Article 3.1 below, assuming the rights and obligations established by this Agreement:*

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

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

*The Coordinator and the Consortium Member(s) together form the “Consortium”]*

**OF THE OTHER PART,**

hereinafter referred to individually as a “Party” and collectively the “Parties”.

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## PREAMBLE

HAVING REGARD to Council Regulation (EC) No 219/2007 of 27 February 2007, as last modified by Council Regulation (EC) No 1361/2008 of 16 December 2008, on the establishment of a Joint Undertaking to develop the new generation European air traffic management system, to which are annexed the SJU Statutes;

WHEREAS the SJU is responsible for implementing the ATM Master Plan and for carrying out specific activities aimed at modernising the European air traffic management system by coordinating and concentrating all relevant research and development efforts in the Union;

WHEREAS, as a result of the SJU membership accession process, the SJU Administrative Board selected 15 Members of the SESAR Joint Undertaking (SJU), in its decision ADB(D) 04-2009 confirmed by the decision of the College of the European Commission ref. C(2009)(3040) dated 28 April 2009.

CONSIDERING that the Administrative Board of the SJU established on 12 October 2007, decided that the *“Executive Director should organize discussions [...] in view of defining the participation in the SJU also exploring the possibility of forms of association other than membership”*.

HAVING REGARD to the decision ADB(D)22-2008 of the Administrative Board of the SJU dated 1<sup>st</sup> December 2008, in which the Board reiterated this request and explicitly mandated the Executive Director to *“...explore other possibilities to associate interested organisations, other than membership, and report to the Board at its next meeting”*.

HAVING REGARD to the “Principles of governing the accession and participation of the members of the SESAR Joint Undertaking” adopted by the Administrative Board on 1 December 2008;

HAVING REGARD to the decision ADB(D)02-2010 of the Administrative Board of the SJU dated 18 January 2010 entitled *““Associates Partners of the SJU” and “Associate Partners of an SJU Member””* (hereinafter referred to as the “Administrative Board Decision”) according to which the SJU shall ensure that the Agreement placed between the SJU and the Associate Partners to the SJU fully complies with the requirements of the MA and the MFA.

WHEREAS, in response to the call proposal ref. SJU/LC/0055-CFP, the Partner expressed its intention to participate in the SEAR Programme as an Associate Partner of the SJU, since its experience and expertise in and/or relevant to the ATM field constitute an asset for the ATM research and development activities of the Programme,

WHEREAS the SJU selected the Partner on the basis of its technical, professional, economic, and financial capacity to have a ongoing and formalised cooperation relationship with the SJU in accordance with the SJU Administrative Board Decision (hereinafter referred to as the “Partnership”).

WHEREAS the SJU Administrative Board decided on the acceptance of the proposal submitted by the Partner as an answer to the call ref SJU/LC/0055-CFP,

**IN CONSIDERATION OF THE ABOVE THE PARTIES HAVE AGREED**

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

Schedule 1 – Definitions  
Schedule 2 – Technical Specifications  
Schedule 3 – Partner’s selected Proposal  
Schedule 4- Accession of Consortium Members to this Agreement  
Schedule 5- Model of Specific Agreement  
Schedule 6 – Code of Conduct  
Schedule 7 – Governance  
Schedule 8 – Financial Provisions  
Schedule 9 – Audit Guidelines  
Schedule 10- Background Declaration Form – Template  
Schedule 11 – Declaration of Foreground  
Schedule 12 – Confidentiality  
Schedule 13 – Partner not set up as a legal entity

*[Other Schedules]*

which form an integral part of this agreement (hereinafter referred to as the “**Agreement**”).

|                           |
|---------------------------|
| <b>SPECIAL CONDITIONS</b> |
|---------------------------|

## **1. PURPOSE OF THIS AGREEMENT**

This Agreement shall:

- (i) set forth the terms and conditions according to which the SJU and the Partner shall implement their Partnership,
- (ii) provide, in particular, for the rights and obligations of the Partner towards the SJU and the rights and obligations of the SJU towards the Partner.

## **2. ASSOCIATE PARTNER OF THE SJU**

As from the Effective Date, the Partner shall be an Associate Partner of the SJU and shall - upon signature by the Parties of Specific Agreements - carry out complementary Tasks to the Activities performed by SJU Members within the Programme according to the provisions set forth in this Agreement.

Signature of this Agreement shall not give rise to any obligation on the SJU to place Specific Agreements as per Article 3.2 below. Only the implementation of this Agreement through signed Specific Agreements defining complementary Tasks to be performed by the Partner is binding on the SJU.

The Tasks to be performed by the Partner through mutually agreed Specific Agreements shall be within the awarded Lots described in Schedule 2 (“Technical Specifications”) and as set forth in the Partner’s selected Proposal, attached as Schedule 3 to this Agreement, except for the parts rejected by the Administrative Board as explicitly identified in Annex 1 to Schedule 3.

This Agreement does not confer on the Partner an exclusive right to provide the Tasks within the awarded Lots as described in Schedule 2 and 3.

## **3. IMPLEMENTATION OF THIS AGREEMENT**

### **3.1 PARTNER SET AS A CONSORTIUM**

Any Partner, which applied in the form of a consortium, shall comply with the provisions set forth in Schedule 13 of this Agreement (“Partner not set up as a legal entity”).

### **3.2 SPECIFIC AGREEMENTS**

This Agreement shall cover the implementation of Tasks which shall be performed only upon request by the SJU, after mutual agreement by the Parties through Specific Agreements as detailed in the Model of Specific Agreement in Schedule 5.

Once implementation of the Agreement has been asked or has commenced, the Partner shall reply and provide the Tasks in accordance with all terms and conditions of this Agreement and the following documents which constitute an integral part thereof and are listed in order of precedence in case of conflict:

- Specific Agreement and attached appendices

- Partner's Specific Proposal

### *3.2.1 Invitation to submit a Specific Proposal*

The SJU may invite its Partner to submit a Specific Proposal for the performance of a Task. Such consultation shall take place on the basis of a written Invitation to submit a Specific Proposal open to all the SJU Partners for whom this type of Task is covered by the Lot for which they have been selected for.

Any Invitation to submit a Specific Proposal shall describe the following:

- the nature of the Tasks to be performed and objectives to be reached
- the duration of the Tasks to be performed
- the Deliverables to be produced
- the requested date of delivery
- the maximum amount of co-financing for the Tasks to be performed under the Specific Agreement
- the technical and financial criteria against which the Specific Proposal will be evaluated.

The SJU's drafting of such an Invitation to submit a Specific Proposal may require the assistance of the SJU Members or any other SJU contractor depending on the need, identified by the SJU on a case-by-case basis.

Within twenty (20) working days from the Invitation to submit a Specific Proposal being sent to the Partner, the latter may provide the SJU with a Specific Proposal which shall clearly indicate the following:

- the confirmation of the capacity of the Partner to perform the Tasks requested, including any possible risk detected at that stage and any possible limitations;
- the resources offered to perform the Tasks, including in the case of Consortium, the identification of the specific entity (ies) who will actually participate in the performance of the requested Tasks, and where appropriate CVs of the concerned persons, assets made available, technologies etc;
- the total cost of the Tasks, in accordance with Article 3.3, as shown in an estimated budget attached to the Proposal including a detailed breakdown of the costs that are Eligible for Co-financing under the terms set forth in Schedule 8.
- any other information requested in the Invitation to submit a Specific Proposal.

The Partner shall be free to submit a Specific Proposal to the SJU in response to the consultation carried out. However, should the Partner be unavailable to perform the requested Tasks it shall give reason for its refusal. In the event of failure to observe the twenty (20) working days deadline or disagreement on the allocation of resources, the Partner shall be considered unavailable.

### *3.2.2 Evaluation of the Specific Proposal*

The SJU shall evaluate the Specific Proposal sent by the Partner against the criteria included in the Invitation to submit a Specific Proposal.

If the SJU accepts the Partner's Specific Proposal, it shall issue a Specific Agreement. Each Specific Agreement shall be numbered sequentially and shall contain the following:

- the nature of the Tasks to be performed,
- the list of Deliverables and their expected place and dates of delivery,
- their expected duration,
- the required personnel,
- the maximum amount of co-financing,



- any other document relevant to ensure the mutual understanding of the Tasks to be performed and objective to be achieved,
- the Partner's Specific Proposal as accepted by the SJU in attachment.

The Partner shall send back the Specific Agreement, duly signed and dated, within seven (7) working days of its reception from the SJU.

The Specific Agreement shall become binding once signed by an authorised representative of the SJU after the signature of the authorized representative of the Partner.

Under no circumstances may implementation commence before the date on which the Agreement enters into force. Execution of the Tasks may under no circumstances begin before the date on which the Specific Agreement enters into force.

The period allowed for the performance of the Tasks shall commence on the date the SJU signs the Specific Agreement, unless a different date is indicated therein.

### **3.3 CO-FINANCING**

The maximum amount of co-financing of the SJU to the Partner shall not exceed 75% of the total Eligible Costs of the Tasks performed and shall be set forth in each Specific Agreement.

The amounts and sources of co-financing other than those from the SJU shall be set out in the estimated budget to be attached to each Specific Proposal, as detailed in Article 3.2.1 above. Without prejudice to information obtained subsequently pursuant to Article 17 ("Audit"), the SJU shall adopt the amount of Co-financing for the final payment to be granted to the Partner under each Specific Agreement on the basis of the approval of the documents as referred to in Article 14 ("Deliverables and Reports") below.

#### **4. PAYMENTS**

In accordance with Article 15 of the General conditions (“Payments”), the SJU shall make all payments to the Partner’s following bank account:

Name of bank:

Address of branch in full:

BIC code:

Exact designation of account holder:

XX (The Partner)

Full account number including codes:

IBAN code:

All payments shall be made in Euro.

Upon expiry of the time-limit for acceptance of the Reports and certificates, and without prejudice to the SJU’s ability to suspend this time-limit, the SJU shall pay interest on late payments, as the case may be, at the rate applied by the European Central Bank for its main refinancing operations in euros.

#### **5. GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Agreement or to its implementation shall be made in writing and shall bear the Agreement and Specific Agreement numbers. Ordinary mail shall be deemed to have been received by the SJU on the date on which it is registered by the department responsible indicated below.

Communications shall be sent to the following addresses:

SJU:

SESAR JOINT UNDERTAKING

100, avenue Cortenbergh

B-1000 Brussels

Belgium

Any technical matters shall be addressed to:

Mr ...

Tel.: + ...

Fax: + ...

E-mail: [...](#)

with copy to the Legal Affairs and Contract Unit representative nominated hereunder.

Any financial, contractual and administrative matters shall be addressed to:

Mr ...

Tel.: + ...

Fax: + ...

E-mail: [...](#)

with copy to the Technical representative nominated here above.

**Partner[Coordinator]:**

.....  
.....  
.....

Any technical matters shall be addressed to:

Mr ...

Tel.: + ...

Fax: + ...

E-mail: ...

with copy to the representative nominated hereunder for any financial, contractual and administrative matters.

Any financial, contractual and administrative matters shall be addressed to:

Mr ...

Tel.: + ...

Fax: + ...

E-mail: ...

with copy to the Technical representative nominated here above.

## **6. ENTRY INTO FORCE AND TERM**

This Agreement shall come into force once signed by an authorised representative of the SJU after the signature of the Partner's authorized representative.

This Agreement shall continue in full force and effect for the duration of the SJU, unless terminated at an earlier date by operation of law or in accordance with article 31 ("Termination of the Agreement") hereunder.

## **7. ASSIGNMENT**

The Partner may not assign or transfer any rights or obligations, in whole or in part, to any Third Party without the prior written consent of the SJU.

## **8. NOTICES - CORRESPONDENCE**

Any notices and correspondence given under or in relation to this Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally "in hand" or by sending it by pre-paid post, recorded delivery or registered post or by fax to the address and for the attention of the relevant Party notified for such purpose or to such other address as that Party may have stipulated in accordance with this Article.

Such notices and correspondence shall be effective at the time of delivery when delivered personally "in hand" or upon formal receipt by the other Party.

## **9. OTHER SPECIAL CONDITIONS**

*[if applicable]*

## **GENERAL CONDITIONS**

### **10. DEFINITIONS AND INTERPRETATION**

In this Agreement, the definitions set out in Schedule 1 (“Definitions”) shall apply.

In this Agreement, unless the context requires otherwise:

- the singular includes the plural and vice versa;
- any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

References to Articles and Schedules are, unless otherwise provided, references to the Articles of and Schedules to this Agreement.

If there is any conflict between the Articles and any Schedules and/or any Annexes to the Schedules referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- Articles of this Agreement in the Special Conditions
- Articles of this Agreement in the General Conditions
- Schedules to this Agreement
- Annexes to the Schedules to this Agreement
- Any other document referred to in this Agreement

### **11. GENERAL UNDERTAKINGS**

The Partner undertakes to perform the Tasks as detailed and mutually agreed between the Parties in Specific Agreements under the following principles:

- good faith;
- prompt notification in accordance with Schedule 7 (“Governance”) below of any significant information, risk, fact, problem or delay likely to affect the delivery of the agreed Tasks included in the Specific Agreements;
- compliance with all applicable laws and regulations, in particular EU competition laws, the state aid framework and the code of conduct attached hereto as Schedule 6 (“Code of conduct”) (e.g., exchange of Sensitive Information) when collaborating with SJU Members for the performance of the Tasks;
- in case of a Consortium, the Consortium Member’s participating in the Specific Agreement to carry out the Tasks detailed in the agreed Specific Agreements jointly and severally vis-a-vis the SJU under the conditions set forth in Schedule 13 (“Partner not set up as a legal entity”) taking all necessary and reasonable measures to ensure that the Tasks are carried out in accordance with the terms and conditions of this Agreement.

In particular, the Partner shall:

- Immediately inform the SJU of any change in its legal name, address, legal representatives, and of any change with regard to its legal, financial, organisational or technical situation, including any change of control;

- directly provide the SJU, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors with all information requested in the framework of controls and audits as per Article 17 (“Audit”) below;
- take part in meetings concerning the supervision, monitoring and evaluation of the Tasks which are assigned to it in the agreed Specific Agreements;
- take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this Agreement and inform the SJU of any unavoidable obligations which may have implications for any of its obligations under this Agreement;
- carry out the Tasks assigned to it in accordance with reasonable care and Good Industry Practice and be performed in a professional manner;
- endeavour to promote equal opportunities between men and women in the implementation of the Tasks assigned to it;
- have regard to the general principles of the Commission Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes and career development of the researchers recruited for the Tasks assigned to it.

## **12. GOVERNANCE: ORGANISATION, MANAGEMENT & COORDINATION OF THE PROGRAMME ACTIVITIES**

The Partner agree to perform the obligations set forth in this Agreement through the governance structure - to the extent applicable - detailed in Schedule 7 (“Governance”).

## **13. PARTICIPATION IN THE ADMINISTRATIVE BOARD AND WORKING GROUPS**

The Partner shall not be represented in the Administrative Board but may participate in its meeting upon invitation.

In case the Partner is invited to participate in working groups, the Governance structure set forth in Schedule 7 (“Governance”) to this Agreement, shall apply to the relevant extent depending on the structure/set up of the working group(s).

The Partner is not allocated any voting rights in the Administrative Board.

## **14. DELIVERABLES AND REPORTS**

The following reports shall be provided by the Partner under this Agreement and each Specific Agreement shall define a set of Deliverables and Reports.

All statements and Reports shall be submitted in English and all amounts shall be expressed in Euro.

#### **14.1 INTERIM REPORT**

Together with the delivery of each Deliverable within a Specific Agreement, the Partner shall submit an Interim Report, which shall comprise:

- (i) the objectives of the Tasks, an overview of the work towards the objectives of the Tasks detailed in the relevant Specific Agreement, (including a detailed status of the Deliverable(s), foreseen Tasks until the next Deliverable(s), identified risks of Default and Defaults, recommendations to mitigate these risks of Default and Defaults) the achievement of the Deliverable and an explanation of the discrepancies between the planned and the actual work carried out in the Deliverable;
- (ii) a specific section on the potential contribution of the Partner to the development of new Standards and Norms Proposals in the relevant Specific Agreement, as the case may be;
- (iii) a Costs Breakdown Form detailing the actual Eligible Costs incurred by the Partner, including a statement on the interest accrued on the Pre-Financing payments and any other Revenue related to the Specific Agreement.
- (iv) a publishable summary of (i) hereinabove.

#### **14.2 FINAL REPORT**

Within ninety (90) days from the delivery of the last Deliverable of each Specific Agreement, the Partner shall submit, in addition to the Interim Report relating to the last Deliverable of the relevant Specific Agreement, a Final Report, which shall comprise:

- (i) a final publishable summary report covering the results and conclusions relating to the Tasks performed within a relevant Specific Agreement;
- (ii) a specific section on the potential contribution of the Partner to the development of new Standards and Norms Proposals in the relevant Specific Agreement;
- (iii) an overview of the final achievement of the Deliverables and an explanation of the discrepancies between the planned and the actual work carried out under the Specific Agreement;
- (iv) a Project Costs Breakdown Form of the total Eligible Costs incurred by the Partner during the Specific Agreement, including interest accrued on the Pre-Financing payments and any other Revenue related to the Specific Agreement .

#### **14.3 ACCEPTANCE OF REPORTS AND DELIVERABLES**

Within sixty (60) days from the delivery of each Report and/or Deliverable, the SJU shall evaluate it and may:

- (i) accept it in writing, in whole or in part, or make the acceptance subject to certain conditions;

- (ii) request in writing certain clarifications or additional information, as appropriate. The Partner shall answer the SJU's request within fifteen (15) days from receipt of the SJU's request for clarifications or additional information. If, upon receipt of the clarification or additional information, the SJU does not respond within sixty (60) days, this clarification or additional information shall be deemed to be accepted.
- (iii) reject it by giving an appropriate justification in writing. As a consequence, the costs related to the Report(s) and/or Deliverable(s) shall not be eligible for Co-Financing.

If, within sixty (60) days from the delivery of the Report/Deliverable, no request for clarification or additional information has been notified to a Partner in accordance with what is stated above the Partner shall notify the SJU that the Report and/or Deliverable will be considered accepted in whole by the SJU. If, within the next ten (10) calendar days, the SJU does not notify the Partner of the contrary and justify its position, the Report/Deliverable shall be deemed accepted and the related costs shall be eligible for Co-Financing as appropriate.

#### **14.4 COST BREAKDOWN FORM**

As part of an Interim Report and/or Final Report, the Partner shall submit a Cost Breakdown Form together with a Certificate.

Notwithstanding the above, only a Certificate on the Cost Breakdown Form shall be submitted for claims of Interim Payments when the amount of the Co-Financing claimed by a Partner is equal to or greater than two hundred thousand euros (€200,000), when cumulated with all previous payments for which a Certificate on the Cost Breakdown form has not been submitted.

### **15. PAYMENTS**

#### **15.1 PRE-FINANCING**

The SJU shall, if a Partner so requests, make a Pre-Financing payment to the Partner. For each Specific Agreement, the SJU may request a bank guarantee in accordance with Article 15.3 ("Bank guarantee").

Pre-Financing is an advance on future payments whose main objective is to provide a portion of the initial financial resources in the start-up phase of the Tasks under the relevant Specific Agreement, in accordance with the provisions of Article 3.2.1 ("Invitation to submit a Specific Proposal"). Any Pre-Financing shall remain the property of the SJU until approval of the Final Report. It shall in no way be construed as a payment of costs or expenses incurred by the Partner before the Effective Date. The SJU may recover all or part of the Pre-Financing payment in accordance with Article 15.2 ("Interim and Final Payments").

For each Specific Agreement the Pre-Financing shall not exceed an amount corresponding to 40% of the maximum amount of co-financing agreed.

Interest accrued on Pre-Financing payments shall be deducted from any subsequent Interim and Final Payments. Such interest shall be reported in the Cost Breakdown Form, communicated to the SJU Executive Director in the Interim and Final Reports, and auditable.



The bank account mentioned in Article 4 (“Payment terms”) of the Special Conditions shall make it possible to identify the Pre-Financing and related interest. Otherwise, the accounting methods of the Partner must make it possible to identify the Pre-Financing and the interest.

## **15.2 INTERIM AND FINAL PAYMENTS**

During the execution of a Specific Agreement Interim Payments and/or a Final Payment shall be made to the Partner after a maximum period of thirty (30) calendar days upon acceptance of the Interim and/or Final Report(s) and respective Certificates on the Cost Breakdown Form.

The Payments shall correspond to the following amounts:

- Interim Payments for Specific Agreements with more than one Deliverable: the amount accepted for each Deliverable.. In any case, the total amount of the Pre-Financing and Interim Payments shall not exceed 80% of the maximum Co-Financing per Specific Agreement as defined in Article 3.3 (“Co-Financing”);
- Final Payment: the amount accepted for the last Deliverable of a Specific Agreement by the Partner.
- Within the limit of the initially assessed Co-Financing:
  - where the amount of Co-Financing owed is less than any amount already paid to the Partner, the Partner shall pay the overpaid amount to the SJU.
  - where the amount of Co-Financing owed is more than any amount already paid to the Partner, the SJU shall pay the difference to the Partner as the Final Payment.

The SJU may, in justified cases, recover all or part of the any payments until the Final Payment, particularly in light of the results of an Audit pursuant to Article 17 (“Audit”) hereunder.

Upon expiry of the time-limit for acceptance of the Reports and Payments, and without prejudice to the SJU’s ability to suspend this time-limit, the SJU shall pay interest on late payments, as the case may be, at the rate applied by the European Central Bank for its main refinancing operations in euros.

## **15.3 BANK GUARANTEE**

At any time during the execution of this Agreement, the SJU may, for justified reasons, request the Partner to provide a duly constituted financial guarantee in the form of a first demand bank guarantee or equivalent, supplied by an authorised bank or financial institution, equal to the amount requested for Pre-Financing.

A draft model guarantee is attached in Schedule 8 (“Financial Provisions”) Annex 2 (“Draft model guarantee”).

## **15.4 SUSPENSION OF PAYMENTS**

The SJU may suspend the payment of a Partner’s Co-Financing at any time, in whole or in part:

- (i) if the work carried out does not comply with the provisions of this Agreement and/or its agreed Specific Agreements placed under this Agreement.
- (ii) if the Partner has to reimburse an amount unduly received as state aid to its national state;
- (iii) if the provisions of this Agreement have been infringed or there is a suspicion or presumption thereof, in particular in the wake of any Audits provided for in Article 17 (“Audits”);
- (iv) if there is a suspected or established Irregularity committed by the Partner in the performance of another Agreement funded by the general budget of the European Union or by budgets managed by them. In such cases, suspension of the payments shall occur where the Irregularity (or suspected Irregularity) is of a serious or a systematic nature which is likely to affect the performance of this Agreement;
- (v) if the Partner has made false declarations or has been found to have seriously failed to meet its obligations under this Agreement.

## **16. FINANCIAL RECORDS**

The Partner shall maintain accurate and separate accounts and financial records which are in accordance with Partner GAAP, IPSAS or IFRS and which are adequate to reflect the sources and uses of all funds made available to finance the Tasks.

The Partner shall retain such accounts and records for five (5) years after its last financial transaction with the SJU.

## **17. AUDIT**

### **17.1 GENERAL PRINCIPLES**

The SJU may, at its own costs and at any time during the implementation of the Agreement and up to five (5) years after the last financial transaction between the SJU and the Partner, perform Audits, in relation to the Partner, its Subcontractors or any other Third Party who has contributed to the performance of the Tasks set forth in the agreed Specific Agreements. .

The Audits may cover:

- financial aspects;
- scientific aspects;
- technological aspects;
- ethical aspects;
- other aspects relating to the proper execution of the Agreement

On the basis of the conclusions of the Audit, the SJU shall take all appropriate measures which it considers necessary, including issuing recovery orders regarding all or part of the payments made by it.

## **17.2 CERTIFICATES ON THE COST BREAKDOWN FORMS**

The Partner shall have the Cost Breakdown Forms audited by an Independent Auditor, in accordance with the Audit guidelines detailed in Schedule 5 (“Audit guidelines”) hereto.

The scope and content of all the certificates shall be in accordance with the principles set out in Schedule 5 (“Audit guidelines”) hereto.

## **17.3 ANTI-FRAUD AND OTHER AUDITS**

Having regard to Articles 17 and 20 of the Statutes of the SJU, the Commission, the European Court of Auditors and the European Anti-Fraud Office (*Office de Lutte Anti-Fraude* or “OLAF”) may, if necessary, carry out controls and on-the-spot checks of the recipients of the SJU’s funding, their Subcontractors and/or Third Parties and the agents responsible for allocating said funding.

In addition, the Commission may carry out on-the-spot checks and inspections in accordance with (i) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other Irregularities, (ii) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by OLAF and (iii) Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by OLAF.

## **17.4 CONSORTIUM MEMBERS**

The provisions of Article 17 (“Audits”) shall also apply to the Consortium Members as if they were individual Associate Partners of the SJU.

## **18. SUBCONTRACTING**

The Partner may subcontract performance of a part of the Tasks to be performed under this Agreement in the agreed Specific Agreements to a Third Party. The costs of subcontracting may be considered as Eligible Costs.

All subcontracting contracts shall, in accordance with Article 8 (“Notices and Correspondence”), be notified in writing to the SJU before they enter into effect. The SJU shall have the right to reject the subcontracting contracts by providing a justified notification to the Partner within fifteen (15) calendar days from the Partner’s notification of the new contract. In case the Partner nevertheless decides to proceed with the rejected Subcontractor, the related cost shall not be considered as Eligible Cost.

In case of subcontracting, this shall be limited to the organisation types eligible under section 3.2 in Schedule 2 (“Technical Specifications”) to this Agreement with the SJU and hence consist of the optimal participation of these small and medium enterprises (SMEs), Research Organisations, Universities and Institutes of Higher Education. In this respect, for major subcontracting (above one hundred seventy five thousand euros (€175,000)), an information notice shall be published by the Partner on the SJU’s website.

Furthermore, any subcontractor whose costs are to be claimed as an Eligible Cost shall be awarded by taking into account the principles of best value for money (best price-quality ratio), transparency and equal treatment, while taking care to avoid any conflict of interests.

The Partner shall remain fully responsible for the performance of its obligations under this Agreement by any of its Subcontractors.

Therefore, the Partner shall be solely responsible for managing the relationship with its Subcontractors and shall therefore ensure, in particular, that:

- such Subcontractors fully comply with the requirements of this Agreement;
- the SJU Members' Access Rights are fully preserved;
- the Subcontractor shall have no access to any other SJU Member's and/or the SJU's Foreground or Background save to the extent strictly necessary for the performance of its obligations under the subcontract and upon prior written consent, not unreasonably withheld or delayed, of the owner of the Background or Foreground as per Article 19.2.2 ("Access Rights") hereunder.
- the SJU's Access Rights are fully preserved.

## **19. INTELLECTUAL PROPERTY RIGHTS**

### **19.1 OWNERSHIP**

#### *19.1.1 Background*

The Partner shall remain the owner of its Background.

The Partner shall identify and indicate, as described below in this Article, the Background it owns which is needed to perform the Agreement and, where appropriate, may exclude specific Background. This exclusion may be temporary for specific cases such as to allow adequate protection of the identified Background prior to providing Access Rights to the Background to the SJU.

The Partner shall use the declaration template attached hereto as Schedule 10 ("Background declaration form - Template") to identify its own needed Background of which the Partner is aware of at that time of the signature of each Specific Agreement and, where appropriate, the Background it excludes. This Schedule shall be regularly updated by the Partner if further Background is considered as needed by the Partner for the performance of each Specific Agreement under the Agreement, respectively.

The Partner shall also provide the SJU with a list of Third Parties (including SJU Member's) Background which it is aware of at the time of the signature of each Specific Agreement and which it Needs to use in order to perform its Tasks under each Specific Agreement. The Partner shall use the declaration template attached hereto as Schedule 10 ("Background declaration form - Template") to identify any Needed Third Party Background. This Schedule shall be regularly updated by the Party if further Background is considered as needed by the Partner for the performance of each Specific Agreement under the Agreement, respectively.

Any Foreground developed before the entry into force of the Agreement shall be considered by the Partner as Background and, when needed for the performance of the Agreement, duly identified as provided hereinabove.

#### *19.1.2 Foreground*

The Foreground shall be owned either by (i) the SJU or (ii) by the Partner.

#### *19.1.3 Foreground owned by the SJU*

The SJU shall own:

- (i) any tangible and intangible asset fully funded with SJU Resources and/or transferred to the SJU for the implementation of the Agreement,
- (ii) Foreground consisting of Specifications, Standards and Norms Proposals and Validation Reports including their related preparatory documents in view of future standardisation. Such Foreground shall be:
  - identified as such in the Agreement's Deliverables and/or Reports,
  - identified as such by the SJU in accordance with procedures and guidelines to be established by the SJU Administrative Board, or
  - transferred to the SJU by the Partner.

This transfer of property shall be subject to any existing Third Party rights on any of the Partner's IPR embedded in and used for the generation of the related SJU Foreground.

The Partner shall automatically transfer ownership thereof to the SJU upon delivery, and SJU's acceptance, of the relevant Deliverable, as per Article 14.3 ("Acceptance of Reports and Deliverable"), together with any additional document or information required for the transfer.

#### 19.1.4 *Foreground owned by the Partner*

The ownership of the Foreground arising from the performance of the Agreement and not owned by the SJU in compliance with the previous paragraph of this Article 19.1.3 ("Foreground owned by the SJU") or by its Members, shall belong to the Partner.

The Partner shall timely declare to the SJU the Foreground created under the Agreement in the Interim and Final Reports.

If employees or other personnel working for the Partner are entitled to claim rights to Foreground, the Partner shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under the Agreement.

Where several Consortium Members have jointly carried out work generating Foreground and where their respective shares of the Tasks cannot be ascertained, they shall have joint ownership of such Foreground (hereinafter referred to as "Joint Foreground").

They may establish an agreement regarding the allocation and terms of exercising that joint ownership of the Foreground.

However, where no joint ownership agreement has been entered into, each of the joint owners shall be entitled to:

- use the Joint Foreground to carry out their own work under this Agreement as well as to exploit it for their own purposes,
- grant non-exclusive, royalty-free licences to other Consortium Members to carry out their own work under this Agreement, without any right to sub-licence, and
- grant non-exclusive licences to Third Parties for the performance of the Programme, without any right to sub-licence, subject to the following conditions:
  - at least forty-five (45) days prior notice must be given to the other joint owner(s), and
  - fair and reasonable compensation must be provided to the other joint owner(s).

If employees or other personnel working for the Partner are entitled to claim rights to Foreground, the Consortium Member shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this Agreement.

## 19.2 ACCESS RIGHTS

### 19.2.1 *General Principles*

The granting of Access Rights may be made conditional on the acceptance of special conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations in accordance with Schedule 12("Confidentiality"), attached hereto, are in place.

On the basis of the Foreground declared by the Partner to the SJU in accordance with Article 19.3.1 ("Protection") and in accordance with Article 19.1.3 ("Foreground owned by the SJU") and Article 19.1.4 ("Foreground owned by the Partner"), a list of Foreground specifying the related Access Rights granted shall be attached to the Deliverables of each Specific Agreement and be regularly updated by the Parties.

Without prejudice to its obligations regarding the granting of Access Rights, the Partner shall inform the SJU as soon as possible of any limitation to the granting of Access Rights to Background, or of any other restriction which might substantially affect the granting of Access Rights.

Unless otherwise agreed by the SJU and the Partner, in particular regarding the rights granted to the SJU and its successor in rights under Articles 19.2.2 ("Access Rights to Background and Foreground owned by the SJU and the SJU Members") and ("Access Right to Foreground and Background owned by the Partner") below, Access Rights shall confer no entitlement to grant sub-licences except for the Partner towards its declared subcontractor having a Need to Use the Foreground or Background for the performance of the Tasks.

Each Party shall use its reasonable endeavours, in particular during the development of technical Specifications and/or Standard or Norm Proposals in which it participates to timely inform the SJU of any existing technology that is technically essential in order to make, sell, lease, use, repair or operate equipment, methods or procedures that comply with the technical Specifications and/or Standard or Norm Proposals under development, without infringing the IPR attached to such technology.

In granting Access Rights, the Partner undertakes not to use any IPR of a Third Party for which the Partner has not acquired the corresponding rights of use and/or to grant licences.

Any disagreement arising between the Parties as to the terms on which any Access Rights under this Article are to be granted, and in particular as to the amount of any fair and reasonable royalty or other compensation, shall be settled in accordance with Article 29 "(Settlement of Disputes)".

### 19.2.2 *Access Rights To Background And Foreground Owned By The SJU And SJU Members*

Access Rights to identified Background and/or Foreground owned by the SJU and/or by SJU Members may be granted by the SJU/SJU Members to the Partner exclusively upon (i) written request by the Partner and (ii) prior written consent of the SJU and/or its Members.

The Partner shall have no access to any other SJU Member's and/or the SJU's Foreground or Background save to the extent strictly necessary for the performance of the defined Tasks and upon prior written consent of the owner of the Background or Foreground.

Should the Partner require access to Background and/or Foreground owned by the SJU or by SJU Members for the performance of the Agreement, the Partner shall first inform the SJU by sending a

written prior notice and express its need to use such Background or Foreground to perform the Agreement.

*19.2.2.1 Access Rights To Foreground And Background Owned By The Partner*

Access Rights to Foreground shall be granted to the SJU Members by the Partner owning the Foreground in order that SJU Members may carry out their own Activities under the relevant Project in the Programme in which the Partner is performing its complementary Tasks. Such Access Rights shall be granted on a royalty-free, non-exclusive, non-transferable and worldwide basis.

Access Rights to Foreground shall be granted by the Partner owning the Foreground to other SJU Members not involved in the Project in which the Partner is performing its complementary Tasks if this Foreground is Needed to Use their own Foreground. Subject to agreement such Access Rights shall be granted either on fair and reasonable conditions or on a royalty-free basis.

Access Rights to Background shall be granted by the Partner owning the Background to SJU Members having a Need to use such Background to carry out their own work under the Projects in which they participate under the Programme. Such access right shall be granted on a non-exclusive, non-transferable, royalty-free and worldwide basis.

SJU Members shall enjoy access right to the Background owned by the Partner if such Background is Needed for the use of their own Foreground. Such access rights shall be granted on a non-exclusive, non-transferable, royalty-free and world-wide basis.

When, under this Agreement, Background and/or Foreground owned by the Partner is identified by a SJU Member as Needed for the use of SJU Foreground, the SJU Executive Director shall request the Partner to within one hundred and twenty (120) calendar days give a written undertaking that it shall grant irrevocable licenses for the Use of the Needed Background during and after the Development Phase:

- (i) to any entity having a Need to use such Background, and
- (i) on a royalty-free, non-exclusive, non-transferable and worldwide basis at least to:
  - manufacture and/or develop any system or device based on the SJU Foreground,
  - sell, lease, or otherwise dispose of any system or device so manufactured and/or developed,
  - use, repair or operate the system or device so manufactured and/or developed, and
  - use any method, procedure or practice developed on the basis of the SJU Foreground.

As long as the requested undertaking of the owner of the Needed Background is not granted, the SJU Executive Director may, suspend or reconsider any work on the relevant parts of the SJU Foreground.

The SJU and its successor in rights shall enjoy access rights to any Background Needed for the use of SJU Foreground on a non-exclusive, non-transferable, royalty-free and world-wide basis during and after the Development Phase.

Should an SJU Member require access rights to Background and/or Foreground owned by the Partner in accordance with what is stated above the Partner shall first inform the SJU by sending a written prior notice and express its need to use such Background or Foreground.

The SJU and its successor in right shall automatically be granted Access Rights to the Partner's Foreground on a fair, reasonable and royalty-free basis for the activities pursued by the SJU, its

successor in right or on behalf of SJU or its successor in right, including research activities occurring after the end of the Development Phase.

*19.2.2.2 Access Rights For Subcontractors*

The Partner Subcontractors shall be granted Access Rights to the SJU Members, the SJU's and the Partner's Foreground or Background to the extent strictly Needed for the performance of their obligations under their respective subcontracts with the Partner and upon prior written consent of the owner of the Needed Background or Foreground, which shall not be unreasonably withheld or delayed.



### **19.3 PROTECTION, USE AND DISSEMINATION**

#### *19.3.1 Protection*

The Partner shall declare to the SJU, without delay, any Foreground created within the framework of this Agreement in accordance with the procedure attached hereto as Schedule 11 (“Declaration of Foreground”).

Where Foreground is capable of industrial or commercial application, appropriate and effective protection by patent or other form of Intellectual Property Right, including protection by secret and/or confidentiality, shall be provided for by the Partner owner of the Foreground, having due regard to its own and the other Parties' legitimate interests in the Programme, particularly commercial interests.

In the event the Partner [Consortium Member] owner of the Foreground does not wish to do so either by filing a patent or keeping the Foreground confidential or a secret, or intends to abandon a patent or a patent application [and does not transfer it to another Consortium Member], the Partner [Consortium Member] shall notify the SJU without delay and justify this decision.

In such cases, the SJU may, with the consent of the Partner [Consortium Member concerned], require the transfer of said Partner [Consortium Member]'s rights free of charge to the SJU, which may take such action in its stead. In this event, the Foreground, as a consequence of a transfer from the Partner [Consortium Member], shall be considered as SJU Foreground. The Partner [Consortium Member] concerned may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.

In respect of any patent secured by the SJU under the terms of this Article, the Party having created the protected Foreground shall be entitled to a royalty-free, non-exclusive, irrevocable licence for any purpose whatsoever, though without the right to grant sub-licences except to its declared Subcontractors involved in the creation of the protected Foreground.

#### *19.3.2 Use And Dissemination*

The Partner [Consortium Member] shall:

- ensure that the Foreground it owns, including the technical reports and Deliverables, is disseminated, provided that all dissemination activities are compatible with the protection of IPRs, including the right to keep an invention secret, confidentiality obligations and the legitimate interests of the owners of the Foreground, of the SJU Members and of the SJU, and
- Use the Foreground or ensure that it is Used.

All publications and/or patent applications filed by or on behalf of the Partner [Consortium Member], or any other dissemination relating to Foreground shall include a statement that the Foreground concerned was co-financed by the SJU, the European Union and EUROCONTROL, as appropriate.

The Partner acknowledge that SESAR is a registered trademark. Therefore, where publication and/or use of the SESAR® trademark or of the SJU logo is envisaged, the Partner shall submit by e-mail to the SJU's Head of Communications any publicity or communication plan (whether in oral, written, graphic and/or electronic form or any other storage media) for its prior approval. This e-mail shall be sent at least twenty (20) calendar days before use or publication and shall contain the following elements: the text to be published, targeted audience, time of publication. Authorisation to use the SJU logo and/or SESAR trademark shall be given in writing by return of e-mail and shall not imply any right of exclusive use.

Unless otherwise agreed with the SJU's Head of Communications, any notice or publication by the Partner, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that the SJU is not liable for any use that may be made of the information contained therein

## **19.4 TRANSFERS**

Where a Party transfers ownership of Foreground, it shall pass on its obligations regarding such Foreground to the transferee, including the obligation to pass those obligations on to any subsequent transferee. These obligations shall include those relating to the granting of Access Rights, protection, Dissemination and Use.

Subject to its obligations concerning confidentiality, where a Party is required to pass on its obligations to provide Access Rights, it shall give the SJU at least forty-five (45) calendar days prior notice of the contemplated transfer, together with sufficient information concerning the contemplated new owner of the Foreground so as to permit the SJU to exercise its Access Rights.

Following notification in accordance with this Article, the SJU may object, within thirty (30) calendar days or within a different time limit agreed in writing, to any contemplated transfer of ownership on the grounds that it would adversely affect its Access Rights. Where the SJU demonstrate that their Access Rights would be adversely affected, the intended transfer shall not take place until Agreement has been reached between the Parties concerned.

## **20. PUBLICATIONS, PRESS RELEASES**

Unless otherwise agreed by the Parties, any communication or publication about the Tasks performed under this Agreement, including at a conference or seminar, shall indicate that these Tasks have received funding from the Union and EUROCONTROL under the Programme.

Any communication or publication made by the Partner, in any form and medium, shall indicate that sole responsibility for said communication or publication lies with the author and that the SJU and its Founding Members are not responsible for any use that may be made of the information contained therein.

The Partner authorise the SJU and its Founding Members to publish the following information in any form and medium, including via the internet:

- the Partner's names and addresses,
- the subject and purpose of the Co-Financing granted by the SJU,
- the amount of Co-Financing granted by the SJU and the proportion of the total cost of the Contribution covered by this Co-Financing.

Upon a reasoned and duly substantiated request by the Partner, the SJU and/or its Founding Members may agree to forego such publicity, if disclosure of the information indicated above would risk compromising the Partner's security or prejudicing its commercial interests.

## **21. LIMITATIONS OF LIABILITIES**

### **21.1 GENERAL PRINCIPLES**

- (a) The Partner shall defend, indemnify and hold harmless the SJU and each of its agents and employees from and against all claims, damages, losses and expenses suffered or incurred due to (i) any breach of the Agreement by the Partner including in the event of subcontracting, (ii) any non-compliance by the Partner with the relevant applicable legislation.
- (b) Without limiting the generality of the foregoing, the Partner shall defend, indemnify and hold harmless the SJU from any and all damages, losses, costs, expenses (including reasonable legal costs, expenses and fees) and all liabilities arising from claims, demands or causes of action brought by or on behalf of any Third Party or entity (including any governmental or administrative authority), which claims, demands or causes of action arise out of the failure of the Partner to comply with the provisions of the Agreement. The Partner shall bear sole responsibility for ensuring that their acts within the framework of the Tasks performed under this Agreement do not infringe Third Parties' rights
- (c) In the event of any action brought by a Third Party against the SJU in connection with performance of the Agreement, the Partner shall assist the SJU. Expenditure incurred by the Partner to this end may be borne by the Partner.
- (d) The Partner shall take out insurance against risks and damage relating to performance of the Agreement if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice on the market. A copy of all the relevant insurance contracts shall be sent to the SJU should it so request.
- (e) When the Tasks performed under this Agreement are performed by a Consortium, the Consortium Members involved in each Specific Agreement shall be jointly and severally liable for their undertakings under this Specific Agreement towards the SJU under the conditions set forth in Schedule 13 ("Partner not set up as a legal entity").
- (f) In case the Partner has been responsible for wilful misconduct and/or made a false declaration, or has been found to have seriously failed to meet its obligations under this Agreement, it may be subject to Financial Penalties of between 2 % and 10 % of the value of the Co-financing received by the Partner. This rate may be increased to between 4 % and 20 % in the event of repeated offence within the 5 years following the first infringement. The Partner shall be notified in writing of any decision by the SJU to apply such Financial Penalties.

### **21.2 SJU'S LIABILITY**

In no event shall the SJU be liable for any direct or indirect damages arising out of or in connection with the performance of these General or Special Conditions whether based upon the Agreement or any other legal theory (including consequential, special, incidental or indirect losses or damages for any reason including loss of profits, clientele or business, whether arising in contract, warranty, tort, negligence, strict liability or otherwise), except in the event of wilful misconduct, gross negligence or fraud.

Nothing in these General Conditions shall operate to exclude or restrict the SJU's liability in case of damage caused intentionally or for death or personal injury resulting from its gross negligence.

## **22. COMPLIANCE WITH COMPETITION LAW**

All the Tasks under this Agreement shall be conducted by the Partner strictly in accordance with applicable competition law, including antitrust laws.

The Partner agrees to abide by Schedule 8 (“Code of Conduct”) attached to this Agreement.

## **23. CONFLICTS OF INTEREST**

The Partner and their personnel shall take all necessary measures to avoid any risk of and/or any conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests able to influence the impartial and objective performance of the Tasks assigned to them under this Agreement.

The Partner must notify the SJU, without delay, of any conflict of interest which exists or could arise during the performance of the Tasks under this Agreement, in accordance with Article 8 (“Notification and Correspondence”) here above.

The Partner shall use its best efforts to ensure that its personnel is not placed in a situation which could give rise to a conflict of interest.

The Partner declares:

- that it has not made and shall not make any offer of any type whatsoever from which an advantage can be derived under this Agreement, other than their proposal to the SJU;
- that it has not granted and shall not grant, has not sought and shall not seek, has not attempted and shall not attempt to obtain, has not accepted and shall not accept, any advantage, financial or in-kind whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the performance of this Agreement.

In case of a conflict of interest, the Partner who has declared a conflict of interest shall not participate in any decision that relates to the matter which gave rise to the conflict of interest unless otherwise agreed by the Parties.

The provisions of this Article shall also apply to the Consortium Members as if they were individual Associate Partners of the SJU.

## **24. CONFIDENTIALITY**

The Parties acknowledge that, during the term of this Agreement and in the framework of the discussions on the matters contemplated for its implementation, disclosures of certain Proprietary Information may occur. The Parties agree on the terms and conditions of disclosure of Proprietary Information and on the rules governing the use and protection thereof, as detailed in Schedule 12 (“Confidentiality”).

## **25. DATA PROTECTION**

Any personal data included in the Agreement shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The data shall be processed solely for the purposes of the performance, management and monitoring of the Agreement by the SJU data controller without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in application of Union law. The Partner shall have the right of access to his/her personal data and the right to rectify any such data. Should the Partner have any queries concerning the processing of his/her personal data, s/he shall address them to the SJU data controller to the following e-mail address: [sju.dpc@sesarju.eu](mailto:sju.dpc@sesarju.eu). The Partner shall have right of recourse at any time to the European Data Protection Supervisor.

Where the Agreement requires the processing of personal data, the Partner may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Partner shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Agreement.

The Partner undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
  - aa) unauthorised reading, copying, alteration or removal of storage media;
  - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

## **26. EVALUATION**

The SJU shall carry out an evaluation of the results of the Programme, and of the general financial situation resulting there from, for the purposes of the evaluation required by the Commission and provided for in Article 7 of the SJU Statutes.

The Partner as well as any Third Party involved in the Programme shall cooperate to enable such evaluation.

The terms and conditions of this Article shall also apply to the Consortium Members as if they were individual Associate Partners of the SJU.

## **27. LANGUAGE**

The Parties acknowledge that discussions have been conducted and that the Agreement has been drafted in English.

Any translated versions of this Agreement shall be allowed, for information purposes, if so required under any national jurisdiction of the Partner.

## **28. APPLICABLE LAW**

This Agreement shall be governed by and construed according to European Union law and, on a subsidiary basis, Belgian law.

## **29. SETTLEMENT OF DISPUTES**

Any dispute arising between the Partner and the SJU out of or in strict connection with this Agreement shall be settled by negotiation, mediation, recommendation of the SJU and, lastly, brought before the Court of Justice of the European Union.

## **30. AMENDMENTS TO SJU STATUTES, SJU INTERNAL REGULATIONS AND/OR SJU POLICIES**

The SJU Administrative Board may amend the SJU Policies, may request the Commission to make a proposal of amendment of the SJU Statutes as per article 24 of the SJU Statutes and article 5(4) of the Regulation, and adopt additional SJU Internal Regulations and SJU Policies at any time.

The Partner agrees to abide by the terms thereof upon two months prior notice by the SJU of any such amendment or adoption to the Partner.

## **31. TERMINATION OF THE AGREEMENT**

### **31.1 CONDITIONS FOR TERMINATION BY THE SJU**

The SJU may terminate the Agreement in the following circumstances:

- (a) where the Partner 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 Partner 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 it is established or with those of the country applicable to the Agreement or those of the country where a Task is to be performed;
- (c) where the SJU has evidence or seriously suspects the Partner or any related entity or person, of professional misconduct;
- (d) where the SJU has evidence or seriously suspects the Partner or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the SJU's financial interests;
- (e) where the SJU has evidence or seriously suspects the Partner or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Agreement;
- (f) where the Partner is in breach of its obligations under Article 23 ("Conflicts of interests");
- (g) where the Partner was found guilty of misrepresentation in supplying the information required by the SJU as a condition of participation in the procedure of awarding this Agreement or failed to supply this information;
- (h) where a change in the Partner's legal, financial, technical or organisational situation could, in the SJU's opinion, have a significant effect on the performance of a Task;
- (i) where execution of the Tasks under a relevant Specific Agreement has not actually commenced within three (3) months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the SJU;
- (j) where the Partner is unable, through its own fault, to obtain any permit or licence required for performance of a Task;
- (k) where the Partner 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 its contractual obligations.

Prior to termination under point c), d), e), h) or k), the Partner shall be given the opportunity to submit its observations.

The SJU shall notify the Partner [Coordinator] of the termination, which shall take effect on the date indicated in the notification.

The termination may, in case of a Consortium, terminate the participation of the affected Consortium Member only, as the case may be.

## **31.2 CONDITIONS FOR TERMINATION BY THE PARTNER**

The Partner may unilaterally terminate this Agreement by giving prior notice of six (6) months in accordance with the provisions of Article 8 (“Notices - correspondence”) of this Agreement in the following cases:

- (a) The SJU cannot disburse the Co-Financing as a result of (i) the EC contribution agreement and/or the SJU-Eurocontrol Agreement being terminated and/or (ii) the SJU not receiving the corresponding funds from the Founding Members.
- (b) The SJU Policies, Statutes and/or Internal Regulations are amended as per Article 30 above (“Amendments to SJU Statutes, SJU Internal Regulations and/or SJU Policies”) in such a way that it would materially and adversely affect the Partner’s rights and obligations.

In case of termination due to an amendment to SJU Statutes, SJU Internal Regulations and/or SJU Policies as per paragraph (b) hereinabove, the amended SJU Statutes, SJU Internal Regulations and/or SJU Policies shall have no binding effect during the six (6) month notice of termination period.

The Partner may decide to terminate its participation in a Specific Agreement if a Force Majeure Event:

- prevents the Partner from performing the detailed Tasks correctly and in due time as set out in the relevant signed Specific Agreement, and
- lasts for a continuous period of more than three (3) months.
- The Partner undertakes to notify the SJU without delay in accordance with Article 8 (“Notices and Correspondence”) in case of such a Force Majeure Event stating the nature, probable duration and foreseeable effects.

### **31.3 CONSEQUENCES OF TERMINATION**

#### *31.3.1 General Principles*

Within thirty (30) calendar days after the effective date of the termination of the Partner the said Partner shall submit to the SJU all the required Interim Reports and Deliverables relating to the Tasks carried out up to that date, as the case may be.

In the event of termination, payments by the SJU shall be limited to the Eligible Costs actually incurred by the Partner up to the date when termination takes effect. Costs relating to Tasks included in signed Specific Agreements that are not due to be executed until after termination shall not be taken into account.

#### *31.3.2 Consequences On Access Rights And Tasks*

Upon the effective date of termination:

- (i) any and all Access Rights granted to the terminated Partner and/or its Subcontractors by the SJU Members shall cease immediately, and
- (ii) any and all Access Rights granted by the terminated Partner to the SJU Members and/or its Subcontractors and/or the SJU and its successor in right, as the case may be, shall remain in full force and effect.

#### *31.3.3 Other Consequences*

Notwithstanding the reasons for termination of this Agreement, for whatever reason, the obligations to which the Partner is bound pursuant to Articles 19 (“Intellectual Property Rights”) and 22 (“Confidentiality”), shall continue to apply to the Partner after termination.



## **SIGNATURES**

Done in two copies, one for each Party, in English

For the Partner

signature: \_\_\_\_\_

Done in \_\_\_\_\_,  
On \_\_\_\_\_ 2011.

For the SESAR Joint Undertaking,  
Mr. Patrick KY  
Executive Director

signature: \_\_\_\_\_

Done in Brussels,  
On \_\_\_\_\_ 2011.

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| <b>SCHEDULES</b> |
|------------------|

## **SCHEDULE 1 – DEFINITIONS**

|  |  |
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| <b>“Access Right”</b>  | means non-exclusive licences and user rights to Foreground or Background which shall not include the right to sublicense unless otherwise agreed upon in this Agreement.   |
| <b>“Accession Form”</b>  | means the form referred to in Schedule 4.  |
| <b>“Activities”</b>  | refers to activities related to a SESAR Programme work package, sub work package or project performed by an SJU Member as described in the technical schedules of the Multilateral Framework Agreement.  |
| <b>“Administrative Board”</b>  | refers to one of SJU constituent organ in accordance with the statutes of the SESAR Joint Undertaking annexed to Council Regulation No 219/2007 of 27 February 2007 modified by Council Regulation (EC) 1361/2008 of 16 December 2008 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR).  |
| <b>“Administrative Board Decision”</b>                               | refers to decision ADB(D)02-2010 of the SJU Administrative Board dated 18 January 2010 entitled “ <i>Associate Partners of the SJU</i> ” and “ <i>Associate Partners of an SJU Member</i> ”.   |
| <b>“Agreement”</b>   | refers to the Framework Partnership Agreement ref ...  |
| <b>“Annexes”</b>   | refers to any document attached to the Schedules.  |
| <b>“Article(s)”</b>  | refers to the articles of the Agreement.   |
| <b>“Associated Partner of the SJU” or<br/>“Associate of the SJU”</b> | <p>refers to a specific category of stakeholders in the SESAR Programme, either set in the form of a single legal entity or of a Consortium, as defined in the Administrative Board Decision ref. ADB(D)02-2010. An Associate of the SJU can either be an SME, a Research Organisation, a University and Institute of higher education either from EU and non-EU member State or a Consortium of these entities.</p> <p>An Associate of the SJU is referred to in this Agreement as “Partner”.</p> |

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| <b>“Audit”</b>                                   | means all procedures to be carried out in order to control that any financial or technical operations have been properly recorded, legally and regularly executed, and managed so as to ensure, economy, efficiency, and effectiveness in accordance with Article 17 and Schedule 9 of this Agreement.  |
| <b>“Background”</b>                              | means the Background Information and Background IPR which is held by the Partner prior to the Effective Date and/or is acquired by the Partner, as a result of activities performed outside of the framework of this Agreement as identified in an annex to each Specific Agreement.  |
| <b>“Background Information”</b>                  | means any Information which is owned or controlled by Partner Member on the Effective Date of this Agreement and/or is acquired by the Partner, as a result of activities performed outside of the framework of this Agreement.   |
| <b>“Background IPR”</b>                          | means any IPRs which are owned or controlled by the Partner or, when applicable, a Consortium Member on the date of signature of this Agreement and/or is acquired by the Partner as a result of activities performed outside of the framework of this Agreement  |
| <b>“Certificate on the Cost Breakdown Forms”</b> | refers to the independent report of factual findings produced by an Independent Auditor as part of the Interim and/or Final Report.   |
| <b>“Co-financing”</b>                            | means the process by which the SJU shall finance a maximum of: <ul style="list-style-type: none"> <li>- 75% of the Associate Partner’s total Eligible Costs incurred for “research and technological development activities”, and</li> <li>- 50% of the Associate Partner’s total Eligible Costs incurred for any other type of Tasks performed under the Agreement.</li> </ul> |
| <b>“Commission”</b>                              | means the Commission of the European Union.   |
| <b>“Consortium”</b>                              | refers to an association of two or more SME, Research Organisation, University and institute of higher education, including those from non-EU member States with the objective of participating in common Tasks and pooling their resources for achieving a common goal as Associate Partners of the SJU.   |

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| <b>“Consortium Agreement”</b>                | refers to the agreement concluded by the Consortium Members as per Article 3 of the Agreement.  |
| <b>“Consortium Member(s)”</b>                | refers to the legal entities participating in the Consortium as listed in Article 3 of the Agreement.   |
| <b>“Coordinator”</b>                         | means the Consortium Member acting in the name and on behalf of all the Consortium Members.   |
| <b>“Cost Breakdown Form”</b>                 | refers to the template in the form attached as Annex 1 to Schedule 13.  |
| <b>“Default”</b>                             | refers to situation where one or more Deliverable(s) cannot be duly and/or timely delivered for any reason whatsoever, including but not limited to the Partner’s temporary or permanent technical incapacity, or any Force Majeure Event.                          |
| <b>“Deliverables”</b>                        | means deliverable(s) as detailed in each Specific Agreement.  |
| <b>“Development Phase”</b>                   | means the second phase of the Programme as defined in the EC Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) and the SJU Statutes. |
| <b>“Disclosing Party”</b>                    | means the Party furnishing the Proprietary Information.   |
| <b>“Dispute”</b>                             | refers to any dispute arising between the Associate of the SJU and the SJU out of or in strict connection with this Agreement.  |
| <b>“Dissemination”</b>                       | means the disclosure of Foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of Foreground in any medium.  |
| <b>“Effective Date”</b>                      | means the date on which this Agreement enters into force, which shall occur upon the signature of this Agreement by the SJU.  |
| <b>“Eligible Costs”</b>                      | means the eligible costs as detailed in the Schedule 8 (Financial Provisions).  |
| <b>“EUROCONTROL”</b>                         | refers to the European Organisation for the Safety of Air Navigation.   |
| <b>“European Data Protection Supervisor”</b> | refers to the authority as defined by Council Regulation (EC) No 45/2001.   |

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| <b>“Final Report”</b>           | refers to a final report closing Tasks under a Specific Agreement.  |
| <b>“Financial Year”</b>         | means the twelve-month period ending on 31 December of each year.   |
| <b>“Force Majeure Event”</b>    | refers to any one or more events beyond the control of a Party which occur after the Effective Date, were not reasonably foreseeable at the Effective Date, and the effects of which are not capable of being overcome without unreasonable expense and/or unreasonable loss of time to the Party concerned. “Force Majeure Event” shall include (without limitation) war, civil unrest, acts of government, natural disasters, strikes, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions, and general shortages of energy. |
| <b>“Foreground”</b>             | means Foreground Information and Foreground IPR.  |
| <b>“Foreground Information”</b> | means any Information that is generated as a result of the Tasks conducted within the framework of this Agreement and Schedule 8.   |
| <b>“Foreground IPR”</b>         | means any intellectual property rights that are generated as a result of the Tasks as specified in this Agreement and Schedule 8.   |
| <b>“Founding Member”</b>        | means the European Community and EUROCONTROL as per Article 1 of the SJU Statutes.  |
| <b>“GAAP”</b>                   | refers to Generally Accepted Accounting Principles adopted by the Associate of the SJU.   |
| <b>“General Conditions”</b>     | refers to the second part of the Agreement.   |
| <b>“Good Industry Practice”</b> | refers to the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.   |
| <b>“Independent Auditor”</b>    | refers to an auditor who: (i) was not directly or indirectly involved in drawing up the information audited and (ii) has the power to act and/or speak without external constraints. The auditor must be independent from the Partner. The auditor must be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the 8 <sup>th</sup> Council Directive on statutory audits of annual accounts and consolidated accounts or any   |

Community legislation replacing this Directive.

Public bodies may opt to have a competent public officer provide his certificate on the financial statement and on the methodology, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that entity and that the independence of that officer, in particular regarding the preparation of the financial statement, can be ensured.

**“Interim Payments”**

means any payment made by the SJU to the Associate of the SJU related to (a) specific Deliverable(s), upon approval of the submitted Interim Report and related invoice.

**“Interim Report”**

has the meaning set forth in Article 14 of the Agreement (“Deliverables and Report”).

**“Information”**

means any drawings, specifications, photographs, samples, models, processes, procedures, instructions, software, reports, papers, or any other technical and/or commercial information, know-how, data or documents of any kind, including oral information, other than IPR.

**“Invitation to submit a Specific Proposal”**

refers to the requests to be sent by the SJU to its Associate for the performance of specific Tasks in accordance with the procedure described in Article 3.2.1 of the Agreement.

**“IPR” or “Intellectual Property Rights”**

means any intellectual property rights, including patents, utility models and utility certificates, industrial design rights, copyrights, trade secrets, database rights, topographies of semiconductor product rights, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing, excluding trademarks and trade names.

**“Irregularity”**

refers to any infringement of a provision of Belgian law or any breach of obligation resulting from an act or omission by the Associate of the SJU, which has, or would have, the effect of prejudicing the general budget of the SJU, of the European Communities or of EUROCONTROL or budgets managed by them, through unjustified expenditures.

**“Joint Foreground”**

refers to Foreground generated by several Consortium Members as a result of jointly carried out work under the Agreement and

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|  | where their respective shares of the Tasks cannot be ascertained.   |
| <b>“Lot(s)”</b>  | corresponds to a discrete area of activity described in the Specifications.   |
| <b>“MA” or “Membership Agreement”</b>                  | refers to the bilateral agreement between the SJU and each SJU selected member setting forth the terms that govern the selected member’s participation in the SJU as an SJU Member.   |
| <b>“MFA” or<br/>“Multilateral Framework Agreement”</b> | refers to the agreement between the SJU, EUROCONTROL and the SJU Members setting forth the terms that apply between them regarding the implementation of the Programme and governing the implementation of the Activities described in each technical schedule.                                   |
| <b>“Need” or “Needed”</b>                              | means "technically essential" for the implementation of this Agreement and/or in respect of Use of Background and/or Foreground and, where IPR are concerned, shall mean that those IPR would be infringed if the Access Rights were not granted in accordance with Article 19 of this Agreement. |
| <b>“Partner”</b>                                       | refers to the Associate Partners of the SJU.  |
| <b>“Partnership”</b>                                   | refers to the formalised and on-going relationship of cooperation between the SJU and the Partner as a result of call for proposal ref. SJU/LC/0055-CFP.  |
| <b>“Pre-financing”</b>                                 | means any advance payment granted by the SJU to its Associate in accordance with Article 15.1 of the Agreement.   |
| <b>“Programme”</b>                                     | means the SESAR work programme defining the activities to be performed under the Development Phase, in accordance with the SJU Statutes.  |
| <b>“Proprietary Information”</b>                       | means any information or data contained on any medium whatsoever, as defined in Article 24 of this Agreement, including but not limited to any written or printed documents, samples, or any other format that the Parties may elect to use during the term of this Agreement.                    |
| <b>“Receiving Party”</b>                               | means the Party receiving the Proprietary Information.  |

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| <b>“Research Organisation”</b>            | refers here, in line with the principles governing the 7th Framework Programme, to a legal entity established as a non profit organisation which carries out research or technological development as one of its main objectives.   |
| <b>“Revenue”</b>                          | has the meaning set forth in Schedule 8 of the Agreement (“Financial Provisions”).  |
| <b>“Schedule”</b>                         | refers to the documents attached to the Agreement listed in the Agreement’s preamble which form an integral part of this Agreement.   |
| <b>“Sensitive Information”</b>            | means all information pertaining to one of the Parties that could allow the other Party or, when applicable, one of its members, to determine its commercial behaviour and that is not available to the public and not strictly necessary to the implementation of the Tasks . The following is a non-exhaustive list of information that is considered sensitive: sales prices as well as commercial conditions (e.g. conditions and deadlines for payment, rebates, delivery times); information relating to production costs; volumes of production and production capacities, stocks, productivity rate; purchase volumes, purchase prices, supply sources, volume of sales, market shares, client files or supplier files; investment policies and, more generally, commercial strategies; information relating to the internal organisation of any company involved; more generally, any information pertaining to any supplier and normally regarded as a business secret. |
| <b>“SESAR Joint Undertaking” or “SJU”</b> | refers to the legal entity set up by Council Regulation (EC) 219/2007 of 27 February 2007 modified by Council Regulation (EC) 1361/2008 of 16 December 2008.  |
| <b>“SJU Member(s)”</b>                    | refers to EUROCONTROL and/or SJU selected member, including consortium members which have signed a Membership Agreement.  |
| <b>“SJU Policies”</b>                     | refers to the policies developed by the SJU Administrative Board in accordance with the SJU Statutes and governing the external activities of the SJU.  |
| <b>“SJU Resources”</b>                    | refers to the financial resources of the SJU available in accordance with Article 4 of Council Regulation (EC) 219/2007 of 27 February 2007 modified by Council   |



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|  | Regulation (EC) 1361/2008 of 16 December 2008.   |
| <b>“SME”</b>                           | means micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003.   |
| <b>“Special Conditions”</b>            | refers to the first part of this Agreement.  |
| <b>“Specifications”</b>                | means a document approved by the SJU which provides the necessary details about a specific operational and technical requirement for repeated or continuous application, with which compliance is not compulsory.  |
| <b>“Standards and Norms Proposals”</b> | define, amongst other, uniform technical and/or operational Specifications for engineering or technical criteria, configurations, materials, equipment, methods, procedures and practices, and aim ultimately at ensuring interoperability of air traffic management systems in Europe and at enhancing Air Traffic Management capabilities in Europe (such as safety, capacity, security, environment), which may become compulsory upon approval and adoption of the duly empowered authority. |
| <b>“Statutes” or “SJU Statutes”</b>    | refers to the statutes of the SJU annexed to Council Regulation (EC) 219/2007 of 27 February 2007 modified by Council Regulation (EC) 1361/2008 of 16 December 2008.   |
| <b>“Subcontractor(s)”</b>              | refers to means any third party contracted by an Associate of the SJU to carry out any of its Tasks under the Agreement.   |
| <b>“Tasks”</b>                         | means the tasks and activities to be performed by the SJU Associate Partner in order to achieve the Deliverables and Reports defined in the applicable Specific Agreement.   |
| <b>“Third Party”</b>                   | means any entity which is not a Party to this Agreement.   |
| <b>“Union”</b>                         | refers to the European Union.  |
| <b>“Use” or “Used”</b>                 | means the developing, creating and marketing of a product or process for the purpose of creating and providing a service as may be further defined Schedule 8.   |
| <b>“Specific Proposal”</b>             | refers to any proposal to be sent by the Associate of the SJU to the SJU in response to an Invitation to submit Specific Proposal sent by the SJU as per Article 3.2.1 of the Agreement.   |

**“Specific Agreement”**

refers to the contractual document to be issued by the SJU and signed by the Parties in accordance with Article 3.2 of the Agreement.

## **SCHEDULE 2 – TECHNICAL SPECIFICATIONS**

## SCHEDULE 2 – ANNEX 1

*To be completed on paper bearing the letterhead of the financial institution*

For the attention of  
[Address of SJU ]  
[SJU]  
referred to below as the "the SJU"

**Subject:**    **Guarantee No ...**  
**Financial guarantee for the repayment of pre-financing payable under [Agreement number and title] (please quote number and title in all correspondence)**

We, the undersigned, [name and address of the financial institution\*] hereby irrevocably declare that we unconditionally guarantee as a primary obligor and first-call guarantor on behalf of [name and address of the Beneficiary], hereinafter referred to as "the Beneficiary", payment to the SJU of [amount of the pre-financing in euros], this amount representing the guarantee referred to in Article ..... [Agreement number and title] concluded between the Beneficiary and the SJU, hereinafter referred to as "the Agreement".

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation of receipt) stating that the Beneficiary has not fulfilled one of its contractual obligations. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.

We accept notably that no amendment to the terms of the Agreement agreed between the SJU and the Beneficiary can release us from our obligation under this guarantee. We waive our right to be informed of any change, addition or amendment to the Agreement.

We have taken note that this financial guarantee shall remain in force until payments by the SJU match the proportion of the total co-financing accounted for by pre-financing. The SJU undertakes to release the guarantee within 30 days following that date.

This guarantee is governed by the law applicable to the Agreement. The courts having jurisdiction for matters relating to the Agreement shall have sole jurisdiction in respect of matters relating to this guarantee.

This guarantee shall come into force and shall take effect upon its signature.

.....  
(Date and place of signing)

.....  
(Signature)<sup>1</sup>

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\* If the guarantor is not a financial institution, the text of the guarantee will have to be adapted so as to introduce joint and several liability.

<sup>1</sup> The name(s) and position(s) of the persons signing on behalf of the guarantor must be shown in printed characters.

**SCHEDULE 3 – PARTNER’S SELECTED PROPOSAL**

## SCHEDULE 4 – ACCESSION OF CONSORTIUM MEMBERS TO THE AGREEMENT

*(to be filled in by each Member of the Consortium identified in Article 3 of the Agreement)*

*[full name and legal form of the Member], represented for the purpose hereof by [name of legal representative] (function) [and/or (name of legal representative), (function)], or her/his/their authorised representative, established in (full address: city/state/province/country (person legally authorised to act on behalf of the legal entity))] acting as its legal authorised representative, hereby:*

- consents:
  - § to become a Member of the Consortium, Associate Partner of the SJU, under Agreement Number [...] placed between the SJU and *[name of the coordinator and legal form (acronym) established in (full address: city/state/province/country)]*
  - § to carry out, as Associate Partner of the SJU, specific Tasks complementing the Activities performed by SJU Members
- accepts in accordance with the provisions of the Agreement all the rights and obligations of the Consortium.

Done in three (3) copies, of which one shall be kept by the Coordinator and one by *[name of the Consortium Member]*, the third being sent to the SJU by the Coordinator in accordance with Article 3 of the Agreement.

|  |  |
|--|--|
| Name of Legal Entity <i>[full name of the coordinator]</i> | Name of Legal Entity <i>[full name of the Member]</i>      |
| Name of legal representative: <i>(written out in full)</i> | Name of legal representative: <i>(written out in full)</i> |
| Signature of legal representative:                         | Signature of legal representative:                         |
| Date:  | Date:  |
| Stamp of the organisation                                  | Stamp of the organisation                                  |

## **SCHEDULE 5 – MODEL OF SPECIFIC AGREEMENT**

### **SPECIFIC AGREEMENT No [complete] implementing Framework Partnership Agreement ref. ...**

#### **The SESAR JOINT UNDERTAKING,**

Hereinafter referred to as "SJU", a joint undertaking within the meaning of Article 171 of the Treaty establishing the European Community, set up by EC Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) as amended by Council Regulation (EC) No 1361/2008 of 16 December 2008,

Located at 100, avenue de Cortenbergh  
B-1000 Brussels  
Belgium

Represented for the purpose of signing this Specific Agreement by Mr. Patrick KY, its Executive Director.

**OF THE ONE PART,**

**AND**

**[OFFICIAL NAME OF THE PARTNER IN FULL],**

a **[OFFICIAL LEGAL FORM]**, registered under number: **[REGISTRATION NUMBER]**  
Located at **[OFFICIAL ADDRESS IN FULL]**,

VAT registration number : **[NUMBER]**,

*[represented for the purposes of the signature of this Specific Agreement by **[NAME IN FULL AND FUNCTION]**,]*

(hereinafter referred to as the “**Partner**” or “**Associate of the SJU**”),

**HAVE AGREED**

#### **ARTICLE I.1: SUBJECT**

**I.1.1** This Specific Agreement implements Framework Partnership Agreement ref. ... placed between the SJU and the Associate of the SJU on **[complete date]**.

**I.1.2** The subject of this Specific Agreement is **[short description of subject]**.

**I.1.3** The Associate of the SJU undertakes, on the terms set out in the Agreement and in this Specific Agreement and the Annexe[s] thereto, which form an integral part thereof, to perform the following Tasks **[:] [specified in Annex [complete].]**

#### **ARTICLE I.2: DURATION**

**I.2.1** This Specific Agreement shall enter into force *[[on the date on which it is signed by the later of both Parties] [on complete if it has already been signed by both Parties]]*.

**I.2.2** The duration of the Tasks shall not exceed *[days/months]*. Execution of the Tasks shall start from *[date of entry into force of this Specific Agreement]* or *[indicate date]*. 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: PRICE**

**I.3.1** Depending on the nature of the Tasks, the identity and the field of activities of the Associate of the SJU, as specified in the Technical Specifications attached to the Framework Agreement as Schedule 2 and in accordance with Schedule 8 of the Agreement, the total maximum amount to be paid by the SJU under this Specific Agreement shall be EUR *[amount in figures and in words]*. This amount covers all Tasks executed.

**I.3.2** In addition to the price *[no reimbursable costs are foreseen]*.

### **ARTICLE I.4: ANNEX[ES]**

*Annex A - XXX*

### **SIGNATURES**

For the Associate of the SJU,  
*[Company name/forename/surname/function]*

For the SJU,

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

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

Done in Brussels, on *.....*



## **SCHEDULE 6 – CODE OF CONDUCT**

In the performance of this Agreement, there is a risk that the Parties may exchange illegal information or enter into agreements that infringe competition rules.

One of the main European Commission rules in this regard results from Article 101 of the Treaty of the Functioning of the European Union (ex Article 81 of the EC Treaty), which provides that agreements, decisions or concerted practices between undertakings whose object or effect is to prevent, restrict or distort competition within the common market are prohibited.

In case of infringement, the European Commission or a national competition authority can order the companies concerned to end such illegal agreements and can impose fines of up to 10% of the undertakings' turnover.

The performance of this Agreement may require close collaboration between organisations which may usually be in competition with one another.

This collaboration must not be misused, i.e., the Partner shall not use the SJU as a forum through which competitors exchange commercially Sensitive Information that is not directly related to this Agreement as such.

Therefore, this collaboration should be closely linked and strictly limited to the objectives and needs of this Agreement.

Consequently, the Partner hereby undertakes to abide by the principles and rules set forth by the present code of conduct throughout the performance of this Agreement, so as to prevent infringements of competition rules.

### ***GENERAL PRINCIPLES***

Competition with other market players must always be conducted in compliance with the applicable laws and rules of ethics.

Information exchanged with competitors should not allow the identity of those tendering for business to be disclosed or have the effect of reducing competitors' uncertainties.

Exchanges of information between the Partner and other organisations involved with the SJU shall be strictly necessary and limited to this Agreement.

Ignorance of the unlawful nature of behaviour is not an admissible defence argument.

The Partner shall immediately inform the SJU of any suspected contacts with a competitor in order to examine whether any subsequent action should be taken.

### ***PRINCIPLES TO BE COMPLIED WITH WHEN PARTICIPATING IN MEETINGS***

In order to avoid infringing competition rules, it is strongly recommended to:

#### ***BEFORE THE MEETINGS***

- Request a strictly defined agenda
- Verify its content: all the items of the agenda must be compatible with competition law
- Refuse to participate in discussions that do not appear to be legal
- Demand that the agenda be followed as defined

#### ***DURING THE MEETINGS***

### Behaviour

- Officially alert the other party if the internal operating processes are not being complied with
- Withdraw in the event that compliance is refused
- Refuse to participate in informal gatherings
- Leave the meeting if necessary and have it noted in the minutes
- Meet only on the scheduled dates and under the conditions provided for in the present code of conduct
- Avoid meetings in corridors and informal and bilateral exchanges of information (see list of forbidden practices that are authorized in part)

### Information exchanged

- The information exchanged between parties must be strictly necessary and limited to this Agreement as defined below.

### ***AFTER THE MEETINGS***

- Rule out any discussions on items that were not placed on the agenda beforehand
- Demand copies of minutes and reports of meetings
- In case of any difficulties, immediately advise the SJU of the competitors' suspected requests in order to examine the subsequent action to be taken

### ***NON EXHAUSTIVE LIST OF PROHIBITED PRACTICES***

- Exchanges of information that allow the identity of those tendering for business to be disclosed or which are likely to reduce companies' competitive uncertainties with respect to:
  - o Prices, cost or sales prices, profit level
  - o Pricing policy, price levels, pricing methods, scheduled price increases or reductions
  - o Production, markets, technical development not linked to this Agreement, investments
- Sharing markets or sources of supply
- Disclosing company strategy to competitors
- Disclosing market strategy to competitors
- Concerted practices tending to limit other companies' access to the market
- Dissemination, under the pretence of management assistance, of indicative lists, reference prices
- Dissemination of cost valuation methods which are not linked to this Agreement
- Recommendations with respect to prices, price increases
- Exchanges of individualized information that enable competitors to anticipate and adapt to each other's market behaviour
- Limitations of output or sales

## **SCHEDULE 7 – GOVERNANCE**

**Depending on the Tasks allocated under each Specific Agreement, the Associate Partner of the SJU shall comply with the following Governance set-up.**

### ***1. BASIC PROGRAMME MANAGEMENT PRINCIPLES***

The Programme shall be managed according to the following basic principles:

- Participation of all the SJU Members to achieve the goals as described in the Programme,
- Collaboration between the SJU Members and the SJU,
- Duty of care and duty to mitigate damages in R&D activities,
- Transparency and communication of issues between SJU Members,
- Progress and risk tracking at each level, in order to anticipate and prevent critical issues and disputes,
- Management and resolution of issues by the SJU Members at their own level first, avoiding to the extent practicable recourse to the escalation process,
- Involvement of all the Members participating in a Project in the discussions held to find a remedy, and agreement of all of them on the remedy adopted,
- Proper and timely reporting of information to the upper level in accordance with the processes determined at each level of the Programme structure.

The management of the Programme will be performed through the following structures:

### ***2. WORK PROGRAMME MANAGEMENT STRUCTURE***

#### ***2.1 PROJECT MANAGERS***

Each Project Manager shall:

- Be accountable to the Work Package Leader for comprehensive oversight of the Project it has been entrusted with and for senior management of the operational relationship between the Members involved at Project level,
- Implement the SJU Engineering Methodologies within its Project,
- Structure the Project by designing the work plan in such a way that the Project may be properly and timely refined and implemented, following the guidelines provided by the Work Package Leader, including:
  - implementing and, where necessary, elaborating the SJU Engineering Methodologies and agreed processes (e.g. appropriate reporting, meetings, etc.),
- coordinating the Initiation of the Project and submitting the initiation Report to the SJU.
  - developing a Project management plan conforming to the overall Programme plan, with a copy submitted to the SJU Executive Director,
- Lead and coordinate the activities within the Project and monitor the work progress within the Project as defined during the Initiation phase,
- Ensure the proper and timely communication of information, in particular:
  - within the Project, by setting regular meetings with all the Project Members,
  - to the upper levels, by periodically providing reports to the Sub-Work Package Manager, in particular on:
    - progress (status of completion planning, Deliverables, Gates, resource consumption) including information on progress against the agreed

- description of the Project contained in the applicable Technical Schedule, with particular emphasis on resource consumption,
  - risks of Default and Defaults, in particular those requiring remedies, with the appropriate assessment form,
  - o to the SJU upon request, by providing the periodic reports submitted to the Sub-Work Package Manager,
  - o to the SJU, by drawing up and providing the Interim and Final Reports on its Project.
- Track risks of Default and Defaults, by identifying and assessing their impacts and criticality on the Project and/or on other Projects (within the same Work Package or within another Work Package),
- Secure a consensus and when necessary make decisions in order to:
  - o anticipate negative impacts of Defaults and disagreements internal to the Project by solving them on a timely basis,
  - o consider and resolve disagreements internal to the Project in the first instance,
  - o escalate the disagreements in accordance with in case it cannot be or has not been remedied at Project level,
- Answer Audit requests and collaborate with Independent Auditors,
- Be involved in cross-Work Packages working groups and reports.

## ***2.2 SUB-WORK PACKAGE MANAGERS***

Each Sub Work Package Manager shall:

- Ensure the overall consistency of the work plan of the Projects within its scope of supervision,
- Contribute to the overall consistency of the Programme in accordance with the SJU Engineering Methodologies and established cross-Work Packages technical coordination,
- Follow up, collect and manage the information reported by the Project Managers and periodically report to the Work Package Leader, following guidelines provided by the latter, in particular on:
  - o Progress (status of completion planning, Deliverables, Gates, resource consumption),
  - o Risks of Default and Defaults,
- Report to the SJU upon any reasonable request relating to its activities as Sub Work Package Manager,
- Act as an intermediary at Sub-Work Package level in accordance with, looking to the extent possible for a consensus, in particular in order to:
  - o anticipate negative impacts of Defaults and disagreements internal to the Sub Work Package by solving them on a timely basis,
  - o consider and resolve disagreements internal to the Sub Work Package in the first instance,
  - o escalate disagreements in accordance with in case it cannot be or has not been remedied at Sub Work Package level,
- Answer Audit requests and collaborate with Independent Auditors.

## ***2.3 WORK PACKAGE LEADERS***

Each Work Package Leader shall:

- Be accountable to the SJU for comprehensive oversight of its Work Package and for senior management of the operational relationship between the Members involved at Work Package level;

- Refine the SJU guidelines as appropriate for its Work Package in order to enable the implementation of the common SJU Engineering Methodologies at Project level,
- Design the work plan for proper and timely execution of its Work Package, following the guidelines provided by the SJU, e.g.:
  - refine the methodology and processes (e.g. appropriate reporting, meetings, etc.),
  - define the schedule, milestone plan and detailed planning to achieve the delivery of its Work Package in accordance with the Programme planning,
- Coordinate the activities and monitor the work progress within its Work Package, in particular by providing the impact assessment within the framework of the initiation process.
- Ensure the proper and timely communication of information, in particular:
  - within its Work Package, by setting regular meetings with all the Sub Work Package Managers and Project Managers,
  - to the SJU, by periodically providing it with reports or answering requests from it, in particular on:
    - progress (status of completion planning, Deliverables, Gates, resource consumption) including information on progress against the agreed description of the Work Package contained in the applicable Technical Schedule,
    - risks of Default and Defaults, in particular those requiring remedies, with the appropriate assessment form,
- Track risks of Default and Defaults:
  - by identifying risks of Default and Defaults that arise at Work Package level and assessing their impacts and criticality on the Work Package and/or the overall Programme,
  - by reviewing the impact assessment established by the Project Managers for risks of Default and Defaults arising at Project level;
- Act as a referee at Work Package level, looking to the extent possible for a consensus, in particular in order to:
  - anticipate negative impacts of Defaults and disagreements internal to the Work Package,
  - ensure a timely resolution of disagreements within the Work Package in the first instance,
  - when necessary, escalate the disagreements in accordance with,
- Answer Audit requests and collaborate with Independent Auditors.

## ***2.4 SJU EXECUTIVE DIRECTOR***

The SJU Executive Director is responsible for the management of the Programme.

In this respect, the SJU Executive Director shall consult the Programme Committee, which is defined below.

The SJU Executive Director shall:

- Steer the Programme, by:
  - Organising and coordinating the activities of the Programme, in accordance with the ATM Master Plan, e.g. organising technical research and development work, studies and validations with a view to achieving the objectives of the Programme,
  - Setting up, maintaining and, if needed, updating the Programme management plans and associated methodologies, which includes defining and supervising the implementation of quality standards,

- Managing the design and progress of the Programme, and consequently maintaining the Programme, in accordance with a commonly shared planning,
  - Ensuring the coordination of the Work Packages,
  - Ensuring the overall consistency of the Programme by providing SJU Engineering Methodologies, establishing cross-Work Packages technical coordination and ensuring their implementation,
- Supervise the initiation process.
- Accept or reject the Project Deliverables and/or Reports,
- Manage risks of Default and Defaults:
  - At Programme level, by identifying and assessing risks of Default and Defaults arising at Programme level, and by defining mitigating actions for these risks of Default and Defaults,
  - At Project, Sub-Work Package and Work Package levels, as the case may be,
- Act as a referee at Programme level, looking to the extent possible for a consensus, in particular in order to:
  - anticipate negative impacts of Defaults and disagreements,
  - participate in the Escalation Process.
- Ensure a proper and timely flow of information:
  - Within the Programme, by setting regular meetings with Work Package Leaders,
  - To the SJU Administrative Board as required by the SJU Statutes,
- Answer Audit requests and collaborate with Independent Auditors,
- Without prejudice to the Founding Members' roles and responsibilities, represent and coordinate the Programme activities with external stakeholders, in order to ensure buy-in of the SESAR outputs,
- Without prejudice to the Founding Members' roles and responsibilities, ensure coordination and communication with international organisations,
- Recommend standards to be developed.

## ***2.5 THE PROGRAMME COMMITTEE***

- The Programme Committee will be composed of one representative per Member. The representative thus appointed by each organisation must be duly empowered by the latter to conclude amendments to the Technical Schedules.
- The Programme Committee will be chaired by the SJU Executive Director, who may invite external support on an ad-hoc basis.
- The Programme Committee's role will be to participate in the steering of the Programme and to support the SJU Executive Director in:
  - Monitoring the progress, risks of Default and opportunities and Defaults and budget at Programme level,
  - Identifying the impact of Defaults and the related mitigating actions to be implemented, at Programme level,
  - Providing strategic guidance and making recommendations with regard to the management of the Programme,
  - Ensuring that the SESAR strategy for the Development Phase is fully applied during the activities performed under the SJU.

## **SCHEDULE 8 –FINANCIAL PROVISIONS**

The following details the criteria for determining the eligible costs of the Associate Partners of the SJU.

### **Cost categories**

The Associate of the SJU's eligible costs shall consist of the following costs:

#### **Direct Costs**

Direct Costs are all costs directly related to the Tasks and identified as such by the Associate of the SJU according to accounting principles and its internal rules. Direct Costs include:

- Direct labour costs.

Direct labour costs relate to permanent and temporary workers hired by the Associate of the SJU and remunerated under the Associate of the SJU's normal practices. They include salaries, social security charges and other statutory costs included in the remuneration (e.g. expatriation costs and expenses, national or regional particularities).

For the specific purpose of assessing the total cost of the Tasks to be performed by the Associate of the SJU pursuant to the Framework Partnership Agreement, as detailed in the individual Specific Agreements, standard rates/ fixed hourly rates can be used to define average labour costs per profile/salary class (in terms of level of skill, seniority, etc.) if consistent with the Associate of the SJU's management principles and accounting practices.

- Special internal facilities and/or equipment costs.

Special facilities, associated services and/or equipment used for the performance of the Tasks may be charged on a time basis and must be auditable (technical documentation). These costs shall be determined as follows:

- (i) For special facilities and/or equipment dedicated to the Tasks during this Agreement (existing before or after the Effective Date): the depreciation (or rental costs) related to the duration of use (the duration of use of the equipment must be identified as such by the Associate of the SJU);
- (ii) If special facilities, associated services and/or equipment are used in common with other activities (e.g. a laboratory), an appropriate allocation key must be applied (e.g. eligible labour costs / total labour costs).

Costs sustained to modify or adapt assets existing before the signing of this Agreement for use in the context of the Tasks are eligible.

- Subcontracting costs.  
The costs of subcontracting are Eligible Costs.
- Depreciation of assets purchased or self-created and / or rental of assets if directly related to the Tasks.
- Tooling dedicated to the Tasks.
- Costs of consumables and supplies.

They are eligible only if purchased after the signing of this Agreement (as such they include raw materials, mechanical parts, major external products and miscellaneous costs);

- Travel costs and subsistence allowances for taking part in the Tasks, provided they comply with the Associate of the SJU's usual practices and are adequately recorded.
- Audit costs incurred in relation to the implementation of this Agreement.

### **Indirect Costs**

Indirect Costs are all those Eligible Costs, including General and Administrative Expenses, which cannot be identified by the Associate of the SJU as being directly attributed to the Tasks but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible Direct Costs attributed to the Tasks.

Indirect Costs may include:

- Indirect labour Costs (e.g., supervision, quality, management, finance, accounting)
- IT costs
- Legal expenses
- Insurance expenses
- Maintenance costs
- Utilities such as electricity, gas, communication
- Costs of premises (rental, depreciation)
- Guarantee costs.

Indirect Costs do not include any costs already covered under Direct Costs.

Indirect Costs shall be identified by assessing the actual Indirect Cost allocations of the Associate of the SJU with the help of the Partner existing cost accounting system.

The Partner may use a simplified method of calculating its full Indirect Eligible Costs identified at the level of its legal entity if this is in accordance with its usual accounting and management principles and practices. However, use of such a simplified method is only acceptable where the lack of cost accounting or the legal requirement to use a form of cash-based accounting prevents detailed cost allocation.

Indirect Costs shall represent a fair apportionment of the overall overheads of the organisation.

For Indirect Costs, the Associate of the SJU may opt instead for a flat rate of 7% of its total direct eligible costs, including its eligible costs for subcontracting. If a Partner exercises this option, it shall do so once for all, on all its activities, and shall not change methodology thereafter.

### **Eligibility**

In order to be considered eligible for Co-Financing, the costs incurred must meet the following conditions:

- they must be actual;
- they must have been incurred by the Associate of the SJU during the duration of this Agreement;
- they must have been determined in accordance with the Associate of the SJU's usual accounting and management principles and practices and used for the sole purpose of achieving the



objectives of the action and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness. The Associate of the SJU's internal accounting and auditing procedures must permit direct reconciliation of the costs and receipts declared in respect of the Tasks with the corresponding Cost Breakdown Forms and supporting documents;

- they must be recorded in the accounts of the Associate of the SJU and, in the case of Contribution from Third Parties, in the accounts of the Third Parties.

The Eligible Costs must be exclusive of non-eligible costs such as indirect taxes, duties, interest owed, provisions for possible future losses or charges, exchange losses related to the SJU Co-Financing, costs related to return on capital, costs declared, incurred, or reimbursed in respect of another European Union project, including depreciations or rentals of assets funded by any European Union fund, debt and debt service charges, excessive or reckless expenditure, any kind of mark-ups, and any other costs that do not meet the requirements of the following sections.

Missions outside the European Union shall require prior approval of the SJU to be considered as Eligible Costs.

No recoverable VAT shall qualify as Eligible Costs (Regulation (EC) 680/2007).

### **Costs Breakdown Form**

In order to facilitate the assessment of the overall value of the Eligible Costs, the Associate of the SJU shall detail the value of its Costs per Task using the Cost Breakdown Form attached hereto as Annex 1.

The data provided in this form shall rely on the Associate of the SJU's existing cost-calculation structures and shall not replace supporting documentation of the detailed assessment of the values concerned.

### **Receipts and revenues**

Any receipts and revenues, excluding the Co-Financing received by the Associate of the SJU, in relation to the expenses incurred in connection with this Agreement, received from the European Union, EUROCONTROL, governments and/or any other organization shall be considered as receipts of this Agreement and therefore deducted from the Eligible Costs.

For the avoidance of doubt, charges levied for air navigation services, airport charges and similar means of financing the normal conduct of business of a Partner shall not be deemed remunerations under this paragraph.

For the specific purpose of assessing the receipts and revenues by Tasks, the key allocation used by the Partner shall be the percentage of the initial assessment of the direct and indirect costs divided by the total direct and indirect costs.

### **No profit rule**

The Co-Financing provided by the SJU shall not give rise to any profit for the Partner. For this purpose, at the time of the submission of the Cost Breakdown Form accompanying the Interim and/or Final Report, the final amount of SJU Co-Financing will take into account any Tasks receipts received by the Associate of the SJU.

## SCHEDULE 8 – ANNEX 1

|  |  | WP.SUBWP.PROJECT (as in DoWs)                   |   |                       |                       |
|--|--|---|---|-----------------------|-----------------------|
|  |  | SJU INTERNAL REF. (TO BE COMPLETED BY SJU ONLY) |   |                       |                       |
| <b>I. DIRECT COSTS (ONLY ELIGIBLE COSTS)</b>   |  |   |   |                       |                       |
| <b>A. DIRECT LABOUR COSTS</b>  |  |   |   |                       |                       |
| DIRECT LABOUR COST CATEGORIES (2)  |  | MANPOWER<br>(IN MAN-HOURS)                      | HOURLY RATES (IN EURO)                  |                       |                       |
|  |  |   | SALARIES                                | PERSONAL<br>CHARGES   | TOTAL                 |
| 1.   |  |   |   |                       | € -                   |
| 2.   |  |   |   |                       | € -                   |
| 3.   |  |   |   |                       | € -                   |
| TOTAL A  |  |   |   |                       | € -                   |
| <b>B. USE OF SPECIAL FACILITIES, SERVICES AND/OR EQUIPMENT COSTS</b>                           |  |   |   |                       |                       |
| TYPES OF SPECIAL FACILITIES<br>AND/OR EQUIPMENT (2)  |  | AMOUNT OF UNITS                                 | UNIT RATES<br>(IN EURO)                 |                       | TOTAL<br>PER TYPE     |
| 1.   |  |   |   |                       | € -                   |
| 2.   |  |   |   |                       | € -                   |
| 3.   |  |   |   |                       | € -                   |
| TOTAL B  |  |   |   |                       | € -                   |
| <b>C. SUBCONTRACTING COSTS</b>   |  |   |   |                       |                       |
| SUBCONTRACTS (2)   |  | DIRECT LABOUR<br>COSTS                          | USE OF SPECIAL<br>FACILITIES            | OTHER DIRECT<br>COSTS | INDIRECT COSTS        |
| 1.   |  |   |   |                       | € -                   |
| 2.   |  |   |   |                       | € -                   |
| 3.   |  |   |   |                       | € -                   |
| TOTAL C  |  | € -   | € -                                     | € -                   | € -                   |
| <b>D. OTHER DIRECT COSTS</b>   |  |   |   |                       |                       |
| OTHER COSTS CATEGORIES (2)   |  | DESCRIPTION/JUSTIFICATION                       |   |                       |                       |
| 1. TOOLING DEDICATED TO PROJECT<br>(IF NOT COVERED UNDER B)                                    |  |   |   |                       |                       |
| 2. TRAVEL COSTS, SUBSISTENCE ALLOWANCES  |  |   |   |                       |                       |
| 3. TRANSPORT/INSURANCE   |  |   |   |                       |                       |
| 4. RAW MATERIALS   |  |   |   |                       |                       |
| 5. EXTERNAL MAJOR PRODUCTS<br>(IF NOT COVERED UNDER B or C)                                    |  |   |   |                       |                       |
| 6. EXTERNAL SERVICES<br>(IF NOT COVERED UNDER B or C)  |  |   |   |                       |                       |
| ...  |  |   |   |                       |                       |
| TOTAL D  |  | € -   |   |                       |                       |
| <b>E. SUB TOTAL DIRECT COSTS (A+B+C+D)</b>   |  | <b>€ -</b>                                      |   |                       |                       |
| <b>II. INDIRECT COSTS (ONLY ELIGIBLE COSTS)</b>  |  |   |   |                       |                       |
| INDIRECT COST CATEGORIES (2)   |  | TOTAL INDIRECT COSTS<br>(BASIS FOR ALLOCATION)  | % ALLOCATION (ATTRIBUTED TO<br>PROJECT) |                       | TOTAL<br>PER CATEGORY |
| 1. INDIRECT LABOUR COSTS   |  |   |   |                       | € -                   |
| 2. MAINTENANCE COSTS   |  |   |   |                       | € -                   |
| 3. UTILITIES (ELECTRICITY, GAS, ...)   |  |   |   |                       | € -                   |
| 4. TOOLING INDIRECTLY DEDICATED TO THE PROJECT   |  |   |   |                       | € -                   |
| 5. PREMISES COSTS (RENTAL, DEPRECIATION, ...)  |  |   |   |                       | € -                   |
| 6. PENSIONS (IF NOT COVERED UNDER A)   |  |   |   |                       | € -                   |
| 7. MANAGEMENT  |  |   |   |                       | € -                   |
| 8. FINANCE   |  |   |   |                       | € -                   |
| 9. HR  |  |   |   |                       | € -                   |
| 10. LEGAL  |  |   |   |                       | € -                   |
| ...  |  |   |   |                       | € -                   |
| <b>F. SUB TOTAL INDIRECT COSTS</b>   |  | <b>€ -</b>                                      |   |                       |                       |
|  |  | BASIS: TOTAL DIRECT COST                        | FLAT RATE                               |                       | TOTAL                 |
| <b>F. bis SUB TOTAL INDIRECT COSTS</b>   |  | -   | 7%                                      |                       | N/A                   |
| <b>G. SUB TOTAL INDIRECT COSTS</b>   |  | <b>€ -</b>                                      |   |                       |                       |
| <b>H. SUB TOTAL GROSS ELIGIBLE COSTS (G+E)</b>   |  | <b>€ -</b>                                      |   |                       |                       |
| <b>III. RECEIPTS &amp; REVENUES TO BE DEDUCTED (OTHER THAN SJU CO-FINANCING)</b>               |  |   |   |                       |                       |
| TYPES OF DEDUCTIBLES (2)   |  | DESCRIPTION                                     |   |                       | TOTAL<br>PER TYPE     |
| 1. TAX BENEFITS  |  |   |   |                       |                       |
| 2. GRANTS  |  |   |   |                       |                       |
| 3. (...)   |  |   |   |                       |                       |
| <b>I. TOTAL DEDUCTIONS</b>   |  |   |   |                       | € -                   |
| <b>J. TOTAL ELIGIBLE COSTS (H-I)</b>   |  | <b>€ -</b>                                      |   |                       |                       |
| <b>J*. ESTIMATED CO-FINANCING (50% * J)</b>  |  | <b>€ -</b>                                      |   |                       |                       |
| <b>IV. OTHER CONTRIBUTIONS (TO BE CONSIDERED FOR VOTING RIGHTS ONLY, NOT FOR CO-FINANCING)</b> |  |   |   |                       |                       |
| CATEGORIES (2)   |  | DESCRIPTION                                     |   |                       | TOTAL PER CATEGORY    |
| 1. OTHER IN KIND CONTRIBUTIONS<br>(TO BE SPECIFIED)  |  |   |   |                       |                       |
| (...)  |  |   |   |                       |                       |
| <b>K. TOTAL OTHER IN-KIND CONTRIBUTIONS NOT ELIGIBLE FOR CO-FINANCING</b>                      |  |   |   |                       | € -                   |
| <b>L. TOTAL NET IN-KIND CONTRIBUTIONS (J-J'+K)</b>   |  | <b>€ -</b>                                      |   |                       |                       |

(1) All fields in yellow and blue are for information purpose. Only the information filled into the white fields will serve as a contractual basis for the MA and MFA.  
(2) Where examples are given, they are only indicative. Confer "FINANCIAL PROVISIONS" (Schedule 2 of the MFA) when filling out the fields.

## **SCHEDULE 9 – AUDIT GUIDELINES**

Any financial transactions made by the Partner shall be subject to the internal and external auditing procedures laid down in the Partner's internal rules.

Nevertheless, checks and Audits may be conducted in order to gather assurance that any financial operations carried out under this Agreement have been properly recorded, legally and regularly executed and managed so as to ensure economy, efficiency and effectiveness.

In particular, the SJU may conduct Audits for the following purposes:

- (i) to verify the accuracy of the Eligible Costs declared by the Partner;
- (ii) to review the Partner's compliance with its obligations set out in this Agreement;
- (iii) to review any record created during the implementation of this Agreement; and
- (iv) to review any books of account kept by the Partner in connection with the SESAR Programme.

The Audits, including the spot checks and any other control which may be deemed necessary, can be conducted by the SJU's staff (or by any other independent expert duly appointed or authorised by the SJU), independent auditors, or any other Community body as provided for in the Council Regulation establishing the SJU (all of them hereinafter referred to as "Auditors").

Such Audits may include but are not limited to the following areas:

- (i) the methodology used to assess the Eligible Costs;
- (ii) the budgeted and/or actual Eligible Costs incurred by a Partner within the Project;
- (iii) any report, invoice and/or statement submitted by the Partner;
- (iv) the technical aspects of the reports and Deliverables; and
- (v) any other aspects relating to the Project.

As a consequence, the Partner undertakes to make available the necessary documentation requested by the SJU (or by any other outside independent expert duly appointed and authorised by the SJU) or by Auditors to enable them to check that the action and the provisions of this Agreement are being properly implemented.

The Partner and its employees undertake to take every appropriate measure to facilitate the checks and Audits described in this Agreement.

The Partner shall keep at the SJU's or at any Auditor's disposal all original documents, or in exceptional circumstances duly authenticated copies of all relevant documents, especially supporting documents of accounts, accounting documents and any other documents relating to the financing of the Tasks performed under this Agreement, for a period of at least five (5) years after the last financial transaction between the SJU and the Partner.

The Partner shall ensure that the SJU staff or Auditors have the appropriate right of access to sites and premises where the Tasks under this Agreement are carried out and to all the information, including all computerised data concerning the technical and financial management of the activities under this Agreement, needed to conduct such Audits.

All Audit work and results shall be carried out on a confidential basis. The SJU's staff members who have access to such work and results shall enter into a non disclosure agreement with the Partner.

The SJU shall not disclose the results of such Audit to any other entity without the Partner's prior written consent.

The SJU shall notify the Partner of the Audit at least thirty (30) calendar days before the planned start date of the Audit. The notice shall include:

- the specific objective of the mission,

- the scope of the Audit, control or visit,
- a list of the members of the mission, including any external scientific or technological expert involved in performing it,
- the period covered by the Audit,
- the contemplated Audit methodology,
- the list of information needed to facilitate the Audit work.

The Partner shall have the right (i) to refuse the participation of a potential Auditor or expert on grounds of conflict of interest or commercial confidentiality, by so notifying the SJU in writing within five (5) calendar days after receipt of the relevant letter sent by the SJU as well as (ii) to request, once, a postponement of the mission by ten (10) calendar days for justified reasons.

On the basis of the findings made during the Audit, a provisional findings statement shall be drawn up. It shall be sent by the Auditor to the Partner and the SJU; the Partner may make observations thereon within one month of receiving it.

The final findings statement shall be sent to the Partner and the SJU within two (2) months of expiry of the aforesaid deadline.

On the basis of the final findings statement, the SJU shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it.

## **SCHEDULE 10 – BACKGROUND DECLARATION FORM – TEMPLATE**

[TO BE COMPLETED IN ACCORDANCE WITH ANNEX II OF SCHEDULE 2 (“PARTNER’S SELECTED PROPOSAL”) “BACKGROUND INFORMATION TEMPLATE”]

## **SCHEDULE 11 – DECLARATION OF FOREGROUND**

**From:** *[Partner or, when applicable, Consortium Member]* .....

**To:** *[SJU]* .....

Please find attached hereto a description of an invention made during the execution of the Activities.

Date and Location (signed)

Encl.: - Checklist for preliminary assessment of the requirement for patent action  
- Description of Foreground  
- Prior art documents

## CHECKLIST

Attached is a form to be used to report the creation of Foreground under this Agreement. Please complete where possible.

You are encouraged to informally consult, as soon as possible, the SJU *representatives nominated for this purpose*, to familiarise yourself with the IPR Policy applicable to the SESAR Programme.

**This document is not an assignment.** It simply provides a disclosure of the Foreground you generated under this Agreement to the SJU. **This disclosure will be held in strict confidence by the SJU.**

As appropriate, please respond to the following queries with brief comments and not by simply stating "yes" or "no". Please feel free to provide additional comments on a separate sheet, if deemed necessary.

### **1. Origin of the Foreground:**

Name of the Partner or, when applicable, Consortium Member:  
.....

Address: .....

Telephone number: .....

E-mail address: .....

Website: .....

Task: .....

### **2. Personal details of the inventor(s):**

|                                 | 1 | 2 | 3 | 4 |
|---------------------------------|---|---|---|---|
| <b>Full Name</b>                |   |   |   |   |
| <b>Position</b>                 |   |   |   |   |
| <b>Telephone Number*</b>        |   |   |   |   |
| <b>E-mail Address*</b>          |   |   |   |   |
| <b>Nationality</b>              |   |   |   |   |
| <b>Place of work*</b>           |   |   |   |   |
| <b>Employer*</b>                |   |   |   |   |
| <b>Private Address(es)*</b>     |   |   |   |   |
| <b>Start date of employment</b> |   |   |   |   |
| <b>Date</b>                     |   |   |   |   |
| <b>Signature</b>                |   |   |   |   |

(\*) Please inform the SJU of all changes.

### 3. *Description of the subject Foreground - Patentability*

Please provide a brief description and sketches, where appropriate, of your proposal under the following headings:

- Problems to be solved by the subject Foreground:  
.....  
.....  
.....  
.....
- Prior solutions (principles, disadvantages) – cite reference if possible:  
.....  
.....  
.....  
.....
- Did you carry out a technological background search before developing this Foreground?  
Please attach relevant documentation if any.  
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.....  
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.....
- Solution proposed: clearly set out the main elements of the solution, describing the novelty of your approach. What are the advantages of the new solution?  
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.....  
.....
- Prepare a short but complete description of the solution (further information will be annexed, if necessary). In addition, please attach drawings, diagrams, photographs, models, etc., and any relevant technical reports or notes.  
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.....  
.....
- Based on the known solutions, are these features non-obvious or could a specialist in the field easily find the solution offered by the invention by combining such known solutions?  
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.....



- Have you disclosed or published this Foreground (and if yes, to whom, where, and when)? \*

.....  
 .....  
 .....  
 .....

- Do you plan to disclose or publish this Foreground (and if yes, to whom, where, and when)?\*

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- \* *WARNING: the above information is important as novelty is one of the patentability requirements. Therefore, if the invention has been made public further to a publication or your participation in a conference, for example, it will be impossible to take out a patent anywhere but in the USA (the USA is the only country in the world that accepts the filing of already disclosed inventions)*

#### 4. **Additional questions – Feasibility**

- Has a theoretical or practical analysis been made of the invention and, if so, what was the outcome?

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- Has a prototype been created and, if so, how do technical and/or test results compare with corresponding results obtained using previous solutions?

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- Is the Foreground of interest to the SESAR Programme and, if so, why?

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 .....  
 .....  
 .....

- Will the invention be further developed within or outside the SESAR Programme (please give details)?

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 .....  
 .....

- .....
- Is the Foreground ready to be deployed and, if so why?  
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.....
  - Does it have a commercial potential and, if so, in what fields?  
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.....  
.....  
.....
  - Could you provide a list of applications for which the Foreground is relevant?  
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.....  
.....
  - In what respect could the application/use of the Foreground result in better air traffic management and/or cost savings?  
.....  
.....  
.....  
.....
  - Can infringements of the Foreground be detected and, if so, how?  
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.....  
.....  
.....
  - What companies, types of industry or ATM stakeholders could be interested in this Foreground?  
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.....  
.....  
.....
  - In case the Foreground has been developed by several Consortium Members, how is credit for the invention shared, in %, among them ?  
.....  
.....  
.....

*Date, signature(s) and name(s) of the Partner or, when applicable, Consortium member's representative(s) completing this declaration:*

| DATE | NAME | SIGNATURE |
|------|------|-----------|
|      |      |           |

**SPECIFIC DECLARATION OF FOREGROUND IN CASE OF SOFTWARE CREATION  
AND PROPOSAL FOR REGISTRATION**

**From:** *[Partner or, when applicable, Consortium member]* .....

**To:** *[SJU]* .....

Please find attached hereto a description of software made during the execution of the Tasks under this Agreement.

Date and Location (signed)

## CHECKLIST

Attached is a form to be used to report the creation of Software to the SJU and propose its registration. Please complete where possible.

You are encouraged to informally consult, as soon as possible, the *SJU's representatives nominated for this purpose by the SJU Executive Director* to familiarise yourself with the IPR Policy of the SJU.

**This document is not an assignment.** It simply provides a disclosure of the Foreground you generated under this Agreement to the SJU. **This disclosure will be held in strict confidence by the SJU.**

As appropriate, please respond to the following queries with brief comments and not by simply stating "yes" or "no". Please feel free to provide additional comments on a separate sheet, if deemed necessary.

Please note that in this Notice the following capitalised words shall have the meaning set forth hereunder:

- "Author" shall designate the person who makes substantial contribution to the software.
- "Software" shall designate the computer programme, the accompanying material and the programme specification (i.e. design and maintenance documentation).

1. **Name of the Software:** .....

2. **Origin of the Software:**

Name of the Associate of the SJU: .....

Address: .....

Telephone number: .....

E-mail address: .....

Website: .....

Work Package/Project: .....

3. **Personal details of the Author(s):**

The Author(s) hereby certifies that he/she is the originator of the Software and that, to the best of his/her knowledge, no other persons may claim co-authorship.

|                             | 1 | 2 | 3 | 4 |
|-----------------------------|---|---|---|---|
| <b>Full Name</b>            |   |   |   |   |
| <b>Position</b>             |   |   |   |   |
| <b>Telephone Number*</b>    |   |   |   |   |
| <b>E-mail Address*</b>      |   |   |   |   |
| <b>Nationality</b>          |   |   |   |   |
| <b>Place of work*</b>       |   |   |   |   |
| <b>Employer*</b>            |   |   |   |   |
| <b>Private Address(es)*</b> |   |   |   |   |

|                                 |  |  |  |  |
|---------------------------------|--|--|--|--|
| <b>Start date of employment</b> |  |  |  |  |
| <b>Date</b>                     |  |  |  |  |
| <b>Signature</b>                |  |  |  |  |

(\*) Please inform the SJU of all changes.

#### 4. *Description of the Software*

Please provide a brief description and sketches, where appropriate, of your proposal under the following headings:

- What type of Software is to be declared and registered?

*[e.g. computer programme/accompanying material/programme specifications]*

Please note that the indicated software material must be disclosed with this form in a separate envelope.

- What specific task is the computer programme designed to carry out?

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- Is the programme already being used and, if so, where, or has it at least been tested?

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- In what programming language is the programme written?

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- For what type of computer is the programme designed, or for what type is it most suitable?

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- On what storage medium is the computer programme currently available?

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- Are other storage media planned or being developed?

- .....
- .....
- .....
- .....
- What is the storage requirement of the programme?
- .....
- .....
- .....
- .....
- What terminals are necessary in order to use the programme?
- .....
- .....
- .....
- .....

**5. *Questions relevant to Software protection***

- Please set out clearly the new and original elements of the Software (i.e. description of the novelty of your creation). What are the advantages of the new solution?
- .....
- .....
- .....
- .....
- Are the parts/concepts of the programme that were not devised by you generally known, i.e. what is their origin? (Please name the source).
- .....
- .....
- .....
- .....
- In what language is the software material written and available?
- .....
- .....
- .....
- .....
- For what purpose or in what context was the software developed (i.e. project, work package, etc.)?
- .....
- .....
- .....

- .....
- Is there any intention to give details of the software to third parties or to make it available to them? If so, when?  
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.....  
.....  
.....
  - Who outside the SJU and your own company has already received the software or is aware of its purpose and contents? Was this disclosure covered by a non-disclosure Agreement?  
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.....  
.....  
.....
  - What trade name, if any, will the programme have?  
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**6.     *Questions relevant to the exploitation of the Software***

- Is the Software of interest to the SESAR Programme and, if so, why?  
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.....
- Will the Software be further developed within or outside the SESAR Programme (please give details)?  
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- Does it have a commercial potential and, if so, in what fields?  
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- Could you provide a list of users/ types of users who could use the Software?  
.....

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.....

- In what respect(s) could application of the Software result in better air traffic management and/or cost savings?

.....  
.....  
.....  
.....

- What companies, types of industry or categories of ATM stakeholder might be interested in the Software?

.....  
.....  
.....  
.....

***Date, signature(s) and name(s) of person(s) completing this questionnaire:***

| DATE | NAME | SIGNATURE |
|------|------|-----------|
|      |      |           |
|      |      |           |



## **SCHEDULE 12 – CONFIDENTIALITY**

In the framework of this Agreement, the Parties agree that the exchanging of information is crucial to the successful performance of such Agreement.

Within the framework of this Agreement, the Parties agree to communicate to each other information that is deemed necessary for the performance of such Agreement and to use this Proprietary Information solely for the needs of such Agreement.

The purpose of this Schedule is to define the conditions under which the Parties commit to ensure the confidentiality of the Proprietary Information exchanged between them in the scope of this Agreement and in accordance with Article 24 (“Confidentiality”) of the General Conditions of such Agreement.

### ***1. PROPRIETARY INFORMATION***

As used in this Schedule, the term "Proprietary Information" shall include any information or data, on any medium or format whatsoever, disclosed by the Disclosing Party pursuant to this Agreement, either in writing or orally, subject to the conditions set forth hereinafter, and including without limitation any written or printed documents or any means of disclosing such Proprietary Information that the Parties may elect to use during the term of this Agreement.

Any information in whatever form disclosed by any Party which is designated as Proprietary Information by an appropriate stamp, legend or any other notice in writing or which, when disclosed orally, has been identified as Proprietary Information at the time of disclosure and has been promptly (within thirty (30) calendar days at the latest) confirmed and designated in writing as Proprietary Information by a Party, shall be subject to the relevant terms and conditions of this Schedule.

Any Proprietary Information and copies thereof disclosed by any Party shall remain the property of the Disclosing Party and shall be returned by the Receiving Party in accordance with the provisions detailed under the paragraph “Return of Proprietary Information”.

### ***2. USE OF CONFIDENTIAL INFORMATION***

The Parties hereby covenant that, during the term of this Agreement, the Proprietary Information received from any Party shall:

- be protected and kept in strict confidence by the Receiving Party, which must use the same degree of precaution and safeguards as it uses to protect its own Proprietary Information of like importance, but in no case any less than reasonable care;
- be only disclosed to and used by those persons who have a need to know and solely for the purpose specified in this Schedule and the performance of this Agreement ;
- not be used in whole or in part for any purpose other than that of this Schedule and the performance of this Agreement;
- neither be disclosed nor caused to be disclosed whether directly or indirectly to any Third Party or persons other than those mentioned in the second subparagraph above;
- neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication has not been specifically authorised in writing by the Disclosing Party.
- if stored within its IT infrastructure, be accessible to its IT service providers – if any – only i) to the extent necessary to enable them to provide their services and ii) if such IT service providers are bound by confidentiality obligations at least equivalent to those set out herein.

### **3. EXCEPTIONS**

Notwithstanding the provisions of the paragraph “Use of Confidential Information” above, no Party shall have obligations or restrictions with respect to any Proprietary Information which the Receiving Party can prove:

- has come into the public domain prior to or after the disclosure thereof, and in such case through no wrongful act of the Receiving Party; or
- is already known to the Receiving Party, as evidenced by written documentation in the files of the Receiving Party; or
- has been lawfully received from a Third Party without restrictions or breach of this Schedule; or
- has been independently developed in good faith by employees of the Receiving Party without use of or reference to the Disclosing Party’s Proprietary Information, or
- has been or is published without violation of this Schedule; or
- is approved for release or use by written authorisation of the Disclosing Party, or
- is not properly designated or confirmed as Proprietary Information.

No disclosure made in these cases shall constitute a breach of the confidentiality provisions of this Agreement.

### **4. COMPLIANCE WITH APPLICABLE LAWS**

If any Party becomes aware that it shall be required, or is likely to be required, to disclose Proprietary Information in order to comply with applicable national laws or regulations or with a national court or administrative order, it shall, to the extent it is able to do so, prior to any such disclosure, notify the Disclosing Party, and comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the Proprietary Information to the extent legally possible.

Any disclosure made due to requirements in national laws or court orders shall not constitute a breach of the confidentiality provisions in this Schedule 12.

### **5. RETURN OF PROPRIETARY INFORMATION**

The Receiving Party shall return such items or documents, and any copies thereof, at the Disclosing Party’s request and at the latest upon expiration or termination of this Agreement.

This obligation shall not apply to copies of electronically exchanged Proprietary Information made as a matter of routine information technology back-up, or to Proprietary Information or copies thereof which must be stored by the Receiving Party according to mandatory law, provided that such Proprietary Information or copies thereof shall, subject to the provisions in paragraph “Compliance with applicable laws” hereinabove, be subject to an indefinite confidentiality obligation.

### **6. EXCHANGE OF SENSITIVE INFORMATION**

The Parties shall not exchange any Sensitive Information, unless needed in order to perform this Agreement and in compliance with Schedule 6 (“Code of Conduct”).

### **7. NO REPRESENTATIONS OR WARRANTIES**

The Parties expressly acknowledge and agree that no representations or warranties shall be made as to the completeness or accuracy of the Proprietary Information so disclosed. The Parties shall not make any Use of the Proprietary Information other than that of collaborating to perform this Agreement as contemplated in this Schedule 12.

### **8. APPLICABLE LAWS**

The provisions of this Schedule 12 shall, if required by mandatory national laws of the Partner be interpreted in accordance with such national law.

### **SCHEDULE 13 – PARTNER NOT SET UP AS A LEGAL ENTITY**

This Schedule shall not apply to Partners set up as a legal entity.

#### ***MEMBERSHIP OF A CONSORTIUM***

The Coordinator shall send to the SJU one duly completed and signed Schedule 4 (“Accession of Consortium Members”) of this Agreement per Consortium Member no later than forty-five (45) calendar days after the Effective Date.

Should any legal entity identified above, fail or refuse to accede to the Agreement within the deadline established in the previous paragraph, the SJU is no longer bound by its offer to the said legal entity(ies).

The Consortium may propose to the SJU, within the time-limit to be fixed by the latter, appropriate solutions to ensure the performance of the Tasks.

The Coordinator and the Consortium Member(s) are deemed to have concluded a consortium agreement (the “Consortium Agreement”) regarding the internal organisation of the Consortium. The Consortium Members and the Coordinator form together the Consortium.

The Coordinator and the Consortium Member(s) are collectively referred to as either the Consortium or as the Partner.

The composition and organisation of a Partner shall be entirely transparent to the SJU.

The SJU may object to any change in the composition of the Consortium.

#### ***COORDINATOR***

The Consortium Members shall be represented in this Agreement by a single entity acting as the Coordinator (the “Coordinator”).

The Coordinator, which shall be appointed among the Consortium Members, shall:

- perform its duties in accordance with the provisions of the Consortium Agreement;
- seek and obtain the involvement and approval of the other Consortium Member(s) in all dealings with the SJU;
- arrange for all meetings with the SJU, after having informed the other Consortium Member(s) on all such meetings;
- obtain or provide all documents or information that are necessary for the other Consortium Members to perform the Tasks and to meet their obligations under the Agreement.

The Consortium Members may replace the Coordinator at any time after five (5) days notice to the SJU, in accordance with Article 8**Error! Reference source not found.** (“**Error! Reference source not found.**”) of the Agreement.

#### ***COORDINATOR POWERS***

The Coordinator shall consult with and obtain the approval of the other Consortium Members for any action it may take in their name and on their behalf. The scope of such authority (e.g., commitments,

collection and distribution of any sums owed or that could be owed to the Partner shall be freely determined by the Consortium Members under the Consortium Agreement.

The Coordinator shall have authority to undertake any commitment in the name and on behalf of the other Consortium Members.

#### ***CONSORTIUM CONTRIBUTIONS***

The participation to be made by each Consortium Member to the agreed Tasks shall be defined in each Specific Proposal.

The Consortium Members shall freely allocate the work to be done for each agreed Task between them so that the total work performed by all the Consortium Members together comprises the entire Task allocated to the Partner.

#### ***CONSORTIUM TASKS***

The Tasks of the Consortium are defined under each Specific Agreement.

The Consortium Members shall freely organise the Tasks allocated to the Consortium between them so that the supplies, work and services provided by all the Consortium Members together shall comprise the entire Tasks allocated to the Consortium.

#### ***SUBCONTRACTING BY THE CONSORTIUM MEMBERS***

The Consortium Members may, at their own expense, subcontract with any sub-supplier or independent Partner to perform any portion of the Tasks allocated to the Consortium/Partner subject to (i) compliance with the Agreement, (ii) prior approval of the SJU and (iii) the subcontractor's obligation to comply with the Confidentiality obligations set forth in Schedule 12 ("Confidentiality") of the Agreement.

#### ***LIABILITIES***

The Coordinator is liable towards the SJU for the Consortium/Partner's overall undertaking.

In case of failure by the Coordinator, the Consortium Members shall be jointly and severally liable towards the SJU.

The liabilities of a Consortium towards the SJU are regulated by the Agreement. The Consortium Members shall organise said liabilities between themselves in the Consortium Agreement.