



DRAFT CO-FINANCING AGREEMENT

SESAR INTEGRATED REMOTELY PILOTED AIR SYSTEM DEMONSTRATION ACTIVITIES

[REF. SJU/LC/XXXX-CTR]

[Name of the Project]

The **SESAR JOINT UNDERTAKING**,

Hereinafter referred to as "SJU", a joint undertaking within the meaning of Article 187 of the Treaty on the functioning of the European Union, 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.

AND

OF THE ONE PART,

[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" 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 Members together form the "Consortium", also hereinafter referred to individually as a "Beneficiary" and collectively the "Beneficiaries",

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 for the purposes of implementing SESAR integrated remotely piloted air system flight trials and related demonstration activities, the SJU selected through call proposal ref. SJU/LC/0087-CFP the **[name of the project] project** (hereinafter referred to as the "Project");

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 – Consortium's selected Proposal
Schedule 4 - Accession of Consortium Members to this Agreement
Schedule 5 - Background Declaration Form – Template
Schedule 6 – Foreground Declaration Form - Template
Schedule 7 – Consortium not set up as a legal entity
Schedule 8 – Eligibility of costs
[Other Schedules]

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

SPECIAL CONDITIONS

1 PURPOSE OF THIS AGREEMENT

This Agreement shall set forth the terms and conditions according to which the Consortium shall implement the Project as described in Schedule 3 and the SJU shall co-finance the agreed activities hereunder.

2 DURATION

This Agreement shall enter into force when signed by both Parties on the date of signature of the last contracting Party (hereinafter referred to as the "Effective Date").

This Agreement shall continue in full force and effect during 24 months after the date of the kick-off meeting (T0). After this duration, the Agreement shall expire automatically, unless terminated at an earlier date by operation of law or in accordance with Article 27 ("Termination of the Agreement") hereunder (hereinafter referred to as the "Closing Date").

All periods specified in this Agreement are calculated in calendar days unless otherwise indicated.

The Agreement duration may only be exceptionally extended before expiry of the Agreement and with the express written agreement of both Parties. Extension does not imply any modification of deferment of existing obligations.

3 ACCESSION OF CONSORTIUM MEMBER(S)

The Coordinator shall send to the SJU one duly completed and signed Schedule 4 per Consortium Member at the latest forty-five (45) calendar days after the entry into force of the Agreement.

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 Coordinator may propose to the SJU, within the time-limit to be fixed by the latter, appropriate solutions to ensure the good implementation of the Project.

4 CO-FINANCING OF THE PROJECT

The total Eligible Cost of the Project is estimated at [...] EURO, as shown in the estimated budget included in the financial proposal attached hereto as Schedule 3. This estimated budget gives a detailed breakdown of the actual costs the Project shall entail.

The SJU shall co-finance the Project up to a maximum of [...] EURO, equivalent to [...] %¹ of the estimated total actual costs the Project shall entail.

¹ Maximum 50%

The final amount of SJU Co-financing of the Project shall be determined on the basis of the submitted Final Cost Statement of the Eligible Costs actually incurred under the Project by the Consortium together with the Final Report and in accordance with the provisions of Article 12.2 below. The Eligible Costs of the Project shall be defined in accordance with the provisions of Schedule 8 attached hereto.

Under no circumstances, the Co-financing given by the SJU may finance the entire costs of the Project. The amounts and sources of financing other than those from the SJU shall be set out in the estimated budget attached hereto as Schedule 3.

Without prejudice to information obtained subsequently pursuant to Article 16 ("Audit"), the SJU shall validate the amount of Co-financing for the payment of the balance to be granted to the Consortium on the basis of the approval of the documents as referred to in Articles 12 and 12.3 ("Acceptance of Reports" and "Acceptance of cost statements and their certificates") below.

5 BANK ACCOUNT

In accordance with Article 13 of the General conditions ("Payments"), the SJU shall make all payments to the Coordinator's following bank account:

Name of bank:
Address of branch in full:
BIC code:
Exact designation of account holder:
XX (The Coordinator)
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 EURO.

6 GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Agreement or to its implementation shall be made in writing and shall bear the Agreement number. 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.

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.

7 ASSIGNMENT

The Consortium 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

9.1 LIABILITY

- (i) For sake of clarity, the joint and several liability mentioned in the Agreement is solely enforceable in case of non-delivery or delayed delivery of the Project's Deliverables and/or Reports;
- (ii) In no event shall the Consortium be liable for any 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 of the Consortium.

9.2 THIRD PARTIES LINKED TO A BENEFICIARY

9.2.1. Third parties which are affiliated entity or have a link to a Consortium Member in the framework of a legal structure may:

- carry out part of the Project activities, and/or
- make available resources to the Consortium by means of contribution in-kind to the Project,

as detailed in Schedule 3 attached to this Agreement and/or its amendment.

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9.2.2 The following third parties are recognised as affiliated entities or as entities having a link to the following Consortium Member(s) in the framework of a legal structure covering a collaboration not limited to the Project (hereinafter referred to as "Specific Third Parties"):

- [name of the legal entity] linked to [name of the Consortium Member]
- [name of the legal entity] linked to [name of the Consortium Member]
- ...

9.2.3. Costs incurred by a Specific Third Party to carry out part of the Project activities and/or in relation to their contributions in-kind made free of charge may be deemed eligible provided that the Specific Third Party meets all the following conditions:

- be eligible for funding as if it were a Consortium Member;
- be an affiliated entity or have a link to a Consortium Member in the framework of a legal structure covering a collaboration not limited to the Project;
- be identified in the co-financing agreement;
- abide by the provisions of this Co-Financing Agreement with regard to eligibility of costs and control of expenditure.

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9.2.4 The Consortium Member may charge costs incurred by the Specific Third Party to which it is affiliated or linked in accordance with Article 9.2.1 and Schedule 8. These contributions shall not be considered as receipts of the Project.

The Specific Third Parties shall identify the costs to the Project mutatis mutandis and charge its eligible costs in accordance with the provisions of Schedule 8 of the Co-Financing Agreement. The Consortium Member shall provide to the SJU:

- an individual financial statement from each Specific Third Party in the format of the Cost Breakdown Form attached hereto as Annexe 1 of Schedule 8.

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These costs shall not be included in the Consortium Member's Cost Breakdown Form;

- Certificates on the Final Cost Statement from each Specific Third Party in accordance with Article 12.

9.2.5 When submitting reports referred to in Section 3.2 of Schedule 2 and in Schedule 3, the Consortium shall identify work performed and resources made available by means of contributions in kind to the Project by each Specific Third Party linking it to the corresponding Consortium Member.

9.2.6 The eligibility of the Specific Third Parties' costs charged by the Consortium Member is subject to controls and audits of third parties, in accordance with Article 16.

9.2.7 The Consortium Member shall retain sole responsibility towards the SJU and the other Consortium Members for the Specific Third Parties linked to it. The Consortium Member shall ensure that the Specific Third Parties abide by the provisions of the Co-Financing Agreement.

9.2.8 Any involvement of a third party as specific third party under this Agreement shall be first notified in writing to the SJU, in accordance with Article 8 ("Notices and Correspondence") and duly substantiated. In particular, such notification shall be sent in good time before it is due to take effect and in any case one month before the closing date of the Project. This request shall in particular specify:

- the name of the proposed specific third party,
- the part of the activities of the Project in which the proposed specific third party will be involved,
- any information demonstrating that the proposed specific third party complies with the pre-requisites listed in Article 9.2.3.

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Upon approval of the SJU, the proposed involvement of a third party as Specific Third Party under this Agreement shall be subject of a written amendment concluded by both Parties, in accordance with Article 24 of the Agreement.

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 Consortium undertakes to perform the Project as detailed in Schedule 3 under the following principles:

- good faith;
- compliance with any legal obligation incumbent on him;
- to carry out the Project activities detailed in Schedule 3 jointly and severally vis-a-vis the SJU taking all necessary and reasonable measures to ensure that these activities are carried out in accordance with the terms and conditions of this Agreement

In particular, the Consortium 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 16 ("Audit") below;
- take part in meetings concerning the supervision, monitoring and evaluation of the Project activities;
- 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 Project 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 Project;
- 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 activities assigned to it.

12 ACCEPTANCE OF REPORTS – COST STATEMENT AND DETERMINATION OF THE FINAL AMOUNT OF CO-FINANCING

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

The reports and statements that shall be provided to the SJU by the Consortium under this Agreement are detailed in Section 3.1 of Schedule 2 and in Schedule 3 attached hereto.

The Final Report shall comprise:

- (i) a final publishable summary report covering the results and conclusions relating to the Project;
- (ii) the elements listed in the Indicative Table of Content of the draft Final Report and Final Report of Annexe III attached to Schedule 2 of this Agreement;
- (iii) a Final Cost Statement of the total actual costs incurred by the Consortium, including interest accrued on the Pre-Financing payments, if any;
- (iv) a Certificate on the Final Cost Statement when the amount of the Co-Financing claimed by the Consortium for the Project is equal to or greater than three hundred and seventy five thousand EURO (€375.000,00).

12.1 ACCEPTANCE OF REPORTS

Within thirty (30) days from the delivery of each Report, 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 Consortium 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 thirty (30) 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) shall not be considered for the calculation of the SJU Co-Financing in accordance with the principles set up in Article 4 above and this Agreement may be terminated in accordance with Article 27 below.

If, within thirty (30) days from the delivery of the Report, no request for clarification or additional information has been notified to a Consortium in accordance with what is stated above the Consortium shall notify the SJU that the Report will be considered accepted in whole by the SJU. If, within the next ten (10) calendar days, the SJU does not notify the Consortium of the contrary and justify its position, the Report shall be deemed accepted and the related costs shall be eligible for Co-Financing as appropriate.

Any dispute arising between the SJU Executive Director and the Consortium shall be settled in accordance with the provisions of Article 26 ("Settlement of Disputes") below.

12.2 DETERMINING THE FINAL AMOUNT OF CO-FINANCING

Without prejudice to information obtained subsequently pursuant to Article 16 ("Audits"), the SJU shall adopt the amount of the payment of the balance to be paid to the Consortium on the basis of the documents referred to in Article 13 ("Payments") which it has approved and Schedule 8 attached hereto.

The total amount of Co-financing paid to the Consortium by the SJU may not in any circumstances exceed the maximum amount of the SJU Co-financing laid down in Article 4, even if the total actual costs exceed the estimated total costs specified in Article 4.

If the actual costs when the Project ends are lower than the estimated total costs, the SJU's contribution shall be limited to the amount obtained by applying the percentage of SJU Co-financing specified in Article 4 to the actual costs approved by the SJU.

The Co-financing provided by the SJU shall not give rise to any profit for the Consortium. For this purpose, at the time of the submission of the Final Cost Statement, the final amount of the SJU Co-financing will take into account any Project receipts received by the Consortium.

Without prejudice to the right to terminate the Agreement under Article 27, if the Project is not implemented or is implemented poorly, partially or late, the SJU may reduce the Co-financing initially provided for in line with the actual implementation of the Project on the terms laid down in this Agreement.

On the basis of the amount of the payment of the balance determined in this way and of the aggregate amount of the pre-financing payments already made under the terms of this Agreement, the SJU shall set the amount of the payment of the balance as being the amount still owing to the Consortium. Where the aggregate amount of the payments already made exceeds the amount of the payment of the balance, the SJU shall issue a recovery order for the surplus.

12.3 ACCEPTANCE OF COST STATEMENT(S) AND THEIR CERTIFICATES

Within thirty (30) days from the delivery of the Final Cost statement(s) together with their related certificates, the SJU shall evaluate them and may:

- (i) accept them 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 Consortium representative shall answer the SJU's request within fifteen (15) calendar days from receipt thereof. If, upon receipt of the clarification or additional information, the SJU does not respond within thirty (30) days, this clarification or additional information shall be deemed to be accepted;
- (iii) reject them by giving an appropriate justification in writing. As a consequence, the costs related to the Report(s) issued shall not be considered for the calculation of the SJU Co-Financing in accordance with Article 4.

If, within thirty (30) days from the delivery of the Cost Statements together with their related Certificates, no request for clarification or additional information has been notified to the Consortium in accordance with what is stated above the Consortium shall notify the SJU that the Cost Statements, with their related Certificates, will be considered accepted in whole by the SJU. If, within the next ten (10) days, the SJU does not notify the Consortium of the contrary and justify its position, the Final Cost Statements, together with their related Certificates, shall be deemed accepted and the costs related to the Report issued shall be considered for the calculation of the SJU Co-financing as appropriate.

Any dispute arising between the SJU and the Consortium shall be settled in accordance with the provisions of Article 26 ("Settlement of Disputes") below.

13 PAYMENTS

13.1 PRE-FINANCING PAYMENTS

The SJU shall, if the Consortium so requests, make a pre-financing payment to the Consortium within thirty (30) calendar days from the date of receipt of request of pre-financing by the SJU.

The SJU may request a bank guarantee in accordance with Article 13.3 ("Bank guarantee") below.

Pre-Financing is an advance on future payments whose main objective is to provide a portion of the initial financial resources required in the start-up phase of the Project. 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 Consortium before the Effective Date. The SJU may recover all or part of the Pre-Financing payment in accordance with Article 13.2 ("Payment of the balance") below.

The first pre-financing payment shall not exceed 30% of the maximum contribution of the SJU under this Agreement in accordance with Article 4 above.

In accordance with Schedule 3, the second request for pre-financing payment shall be sent by the Consortium to the SJU [... month - year]. Within thirty (30) calendar days after the

SJU receives the request for payment of this second pre-financing, a pre-financing payment of EUR [...] shall be made to the Consortium, equivalent to 30% of the maximum amount of SJU Co-financing specified in Article 4. The SJU may refuse the second pre-financing request or reduce its percentage if the quarterly reports submitted by the Consortium demonstrate the existence of a delayed implementation.

The bank account mentioned in Article 5 above shall make it possible to identify the Pre-Financing. Otherwise, the accounting methods of the Consortium must make it possible to identify the Pre-Financing.

13.2 PAYMENT OF THE BALANCE

Payment of the balance of the Co-financing is intended to reimburse or cover after the end of the period set out in Article 2 above the remaining part of the Eligible Costs incurred by the Consortium for the implementation of the Project.

Payment of the balance shall be made to the Consortium after a maximum period of thirty (30) calendar days upon acceptance of the final cost statement and respective certificates.

The amount of this payment of the balance shall correspond to the amount resulting from the deduction of the amounts of pre-financing already paid from the amount accepted by the SJU as final cost statement in the Final Report within the limit of the SJU Co-financing pursuant to Article 4 above.

The SJU may, in justified cases, recover all or part of any payments until the payment of the balance, particularly in light of the results of an Audit pursuant to Article 16 ("Audit") hereunder.

Upon expiry of the time-limit for acceptance of the Reports and payment and without prejudice to the SJU's ability to suspend this time-limit, the Consortium is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in EUROS (the "Reference Rate"), plus three and a half points. The reference rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the European Union.

Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article 13.4. The interest payable shall not be considered for the purposes of determining the final amount of co-financing within the meaning of Article 12.3.

By way of derogation from the first subparagraph, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Coordinator only upon request submitted within two months of receiving late payment.

13.3 BANK GUARANTEE

At any time during the execution of this Agreement, the SJU may, for justified reasons, request the Consortium 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 2 Annex 1 ("Draft model guarantee").

13.4 DATE OF PAYMENT

Payments by the SJU shall be deemed to be effected on the date when they are debited to the SJU's account.

14 RECOVERY

If any amount is unduly paid to the Consortium or if recovery is justified under the terms of the Agreement, the Consortium undertakes to repay the SJU the sum in question on whatever terms and by whatever date it may specify.

If the Consortium fails to pay by the date set by the SJU, the sum due shall bear interest at the rate established in Article 13.2 fifth subparagraph. Interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date when the SJU actually receives payment in full of the outstanding amount.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

If payment has not been made by the due date, sums owed to the SJU may be recovered by offsetting them against any sums owed to the Consortium, in cases where the Consortium also has a claim on the Union or the European Atomic Energy Community, after informing him accordingly by registered letter with acknowledgement of receipt or equivalent, or by calling in the financial guarantee provided in accordance with Article 13.3. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the SJU may recover by offsetting before the due date of the payment. The Consortium's prior consent shall not be required.

Bank charges occasioned by the recovery of the sums owed to the SJU shall be borne solely by the Consortium.

15 FINANCIAL RECORDS

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

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

16 AUDIT

16.1 GENERAL PRINCIPLES

The Consortium undertakes to provide any detailed information, including information in electronic format, requested by the SJU or by any other outside body authorised by the SJU to check that the Project and the provisions of the Agreement are being properly implemented. The Audits may cover:

- financial aspects;
- scientific aspects;
- technological aspects;

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

The Consortium shall keep at the SJU's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement for a period of five years from the date of payment of the balance specified in Article 13.2.

The Consortium agrees that the SJU may have an audit of the use made of the SJU Co-financing of the Project carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the Agreement until the payment of the balance is made and for a period of five years from the date of payment of the balance. 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.

The Consortium undertakes to allow the SJU staff and outside personnel authorised by the SJU the appropriate right of access to sites and premises where the Project is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.

16.2 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 SUBCONTRACTING

The Consortium may subcontract performance of a part of the activities to be performed under the Project to a Third Party.

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 subcontracts by providing a justified notification to the Consortium within fifteen (15) calendar days from the Consortium's notification of the new contract. In case the Consortium nevertheless decides to proceed with the rejected Subcontractor, the related cost shall not be considered counted in the costs declared for calculation of the SJU Co-financing.

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

Therefore, the Consortium 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.

18 OWNERSHIP OF THE RESULTS

18.1 OWNERSHIP

18.1.1 BACKGROUND

The Consortium shall remain the owner of its Background.

The Consortium 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 Consortium shall use the declaration template attached hereto as Schedule 5 ("Background declaration form - Template") to identify its own needed Background or Third Party Background of which the Consortium is aware of at that time of the signature of this Agreement and, where appropriate, the Background it excludes. This Schedule shall be regularly updated by the Party if further Background is considered as needed by the Consortium for the performance of the Project under the Agreement.

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

18.1.2 FOREGROUND

The Foreground shall be owned either by the Consortium or by the SJU.

(a) FOREGROUND OWNED BY THE SJU

The SJU shall own any 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 Project's Deliverables and/or Reports.

(b) FOREGROUND OWNED BY ONE OR SEVERAL MEMBER(S)

The ownership of the Foreground arising from the Project shall belong to the Consortium, except where the Foreground consists in Specifications, Standards and Norms Proposals and Validation Reports in accordance with Article 18.1.2 (a) ("Foreground owned by the SJU") hereinabove.

The Consortium shall timely declare to the SJU the Foreground created under the Agreement in the draft and Final Report by using the specific template attached hereto as Schedule 6.

Where several Consortium Members have jointly carried out work generating Foreground and where their respective shares of the tasks under the Project 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 the SJU and its Members to carry out their own work under the Programme, 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 Consortium are entitled to claim rights to Foreground, the Consortium shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under the Agreement.

18.2 ACCESS RIGHTS

18.2.1 ACCESS RIGHTS TO BACKGROUND AND FOREGROUND OWNED BY THE SJU OR BY THE SJU MEMBERS

Access Rights to identified Needed Background and/or Foreground owned by the SJU and/or by SJU Members may be granted by the owner(s) of the requested Background and/or Foreground to the Consortium and/or the Consortium Member(s) to the extent strictly Needed for the performance of its/their obligations under this Agreement, exclusively upon:

- (i) written prior notice sent by the Consortium and/or the Consortium Members to the owner of the requested Background or Foreground to perform the Project under this Agreement;
- (ii) written request by the Consortium and/or the Consortium Members to the owner(s) of the requested Background and/or Foreground, and
- (iii) prior written consent of the owner(s) of the requested Background and/or Foreground not unreasonably withheld or delayed.

Should the Consortium require access to Background and/or Foreground owned by the SJU or by SJU Members for the performance of the Agreement, the Consortium 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.

18.2.2 ACCESS RIGHTS TO FOREGROUND AND BACKGROUND OWNED BY THE CONSORTIUM

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

SJU and its Members shall enjoy access right to the Background owned by the Consortium 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 Consortium is identified by a SJU Member as Needed for the use of SJU Foreground, the SJU Executive Director shall request the Consortium to give a written undertaking that it shall grant irrevocable licenses for the Use of the Needed Background during and after the Development Phase - within one hundred and twenty (120) calendar days -:

- (i) to any entity having a Need to use such Background, and
- (ii) 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 and request the reimbursement of any monies already paid by the SJU to co-finance the Project.

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.

The SJU and its successor in right shall automatically be granted Access Rights to the Consortium'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.

18.3 PROTECTION, USE AND DISSEMINATION

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 Consortium owner of the Foreground, having due regard to its own and the other Party's legitimate interests in the Programme.

In the event the 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 Consortium Member shall notify the SJU without delay and justify this decision.

In such cases, the SJU may, with the consent of the Consortium Member concerned, require the transfer of said 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 Consortium Member, shall be considered as SJU Foreground. The 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.

Each Consortium Member shall:

- ensure that the Foreground it owns, including the Reports, 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 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 Community and EUROCONTROL.

The Consortium acknowledges that SESAR is a registered trademark. Therefore, where publication and/or use of the SESAR® trademark or of the SJU logo is envisaged, the Consortium 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 Consortium, 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

18.4 TRANSFERS

Where the Consortium transfers ownership of its 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 SJU concerned.

However, the Parties may, by separate written Agreement, agree on a different time limit or waive their right to prior notice in the case of transfers of ownership from one Party to a specifically identified Third Party(ies).

19 LIMITATIONS OF LIABILITY

- (a) The Consortium 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 Consortium including in the event of subcontracting, (ii) any non-compliance by the Consortium with the relevant applicable legislation.
- (b) Without limiting the generality of the foregoing, the Consortium 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 Consortium to comply with the provisions of the Agreement. The Consortium 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 Consortium shall assist the SJU. Expenditure incurred by the Consortium to this end may be borne by the Consortium.
- (d) The Consortium 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) The Consortium Members shall be jointly and severally liable for their undertakings towards the SJU under the conditions set forth in Schedule 7 ("Consortium not set up as a legal entity").
- (f) In case the Consortium 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 Consortium. 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 Consortium shall be notified in writing of any decision by the SJU to apply such financial penalties.

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.

20 CONFLICTS OF INTEREST

The Consortium and its personnel shall take all necessary measures to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the Project under this Agreement.

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

The Consortium 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 Consortium 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 offer 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 Consortium 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 other Parties.

21 CONFIDENTIALITY

The SJU and the Consortium undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the agreement that is duly classed as confidential, if disclosure could cause prejudice to the other party. The Parties shall remain bound by this obligation five (5) after the Closing Date of the Project.

Disclosure of confidential where the receiving Party can prove that the confidential information:

- 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 provision; or
- has been or is published without violation of this provision; or
- is approved for release or use by written authorisation of the Disclosing Party, or
- is not properly designated or confirmed as confidential information
- is required by a court decision to be disclosed after all reasonable remedies to maintain the confidentiality of such confidential information

shall not be considered as a breach to this provision.

If any Party becomes aware that it shall be required, or is likely to be required, to disclose confidential 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 other Party, and comply with the disclosing Party's reasonable instructions to protect the confidentiality of the confidential 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.

22 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 Consortium shall have the right of access to his/her personal data and the right to rectify any such data. Should the Consortium 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. The Consortium shall have right of recourse at any time to the European Data Protection Supervisor.

Where the Agreement requires the processing of personal data, the Consortium 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 Consortium shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Agreement.

The Consortium 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.

23 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 Consortium.

24 AMENDMENT

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

Such amendment may not have the purpose or the effect of making changes to the Agreement which might result in unequal treatment of bidders of call SJU/LC/0087-CFP.

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If the request for amendment is made by the Consortium, it must send it to the SJU in good time before it is due to take effect and at all events one month before the closing date of the Project, except in cases duly substantiated by the Consortium and accepted by the SJU.

25 APPLICABLE LAW

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

26 SETTLEMENT OF DISPUTES

Any dispute between the parties resulting from the interpretation or application of the Agreement which cannot be settled amicably shall be brought before the courts of Belgium.

27 TERMINATION OF THE AGREEMENT

The SJU may terminate the Agreement in the following circumstances:

- (a) where the Consortium 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 Consortium 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 the Project is to be performed;
- (c) where the SJU has evidence or seriously suspects the Consortium or any related entity or person, of professional misconduct;
- (d) where the SJU has evidence or seriously suspects the Consortium or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the SJU' financial interests;

- (e) where the SJU has evidence or seriously suspects the Consortium 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 Consortium is in breach of its obligations under Article 22 (“Conflicts of interests”);
- (g) where the Consortium was guilty of misrepresentation in supplying the information required by the SJU as a condition of participation in the Agreement procedure or failed to supply this information;
- (h) where a change in the Consortium’s] legal, financial, technical or organisational situation could, in the SJU’s opinion, have a significant effect on the performance of the Project;
- (i) where the Consortium is unable, through its own fault, to obtain any permit or licence required for performance of the Project;
- (j) where the Consortium Member, 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;
- (h) where, in accordance with the procedure established in Article 12.1 (“Acceptance of Reports”) of the draft co-financing agreement attached hereto, Deliverable A.1 would not be accepted by the SJU.

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

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

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

In exceptional and duly justified cases, such as when 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, the Consortium may terminate this Agreement at any time by giving 60 days written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the SJU does not accept the reasons, the Consortium shall be deemed to have terminated this Agreement improperly, with the consequences set out in the last paragraph of this Article.

In the event of termination, payments by the SJU shall be limited to the costs actually incurred by the Beneficiary up to the date when termination takes effect, in accordance with Article 13. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The Consortium shall have 60 days from the date when termination takes effect, as notified by the SJU, to produce a request for payment of the balance in accordance with Article 15. If no request for payment of the balance is received within this time limit, the SJU shall not reimburse the expenditure incurred by the Consortium up to the date of termination and it shall recover any amount if its use is not substantiated by the Final Report and related cost statement approved by the SJU.

By way of exception, where the SJU is terminating the Agreement on the grounds that the Consortium has failed to produce the Final Report and related cost statement within the deadline stipulated in Article 12 and the Consortium has still not complied with this obligation within two months following the written reminder sent by the SJU by registered letter with acknowledgement of receipt or equivalent, the SJU shall not reimburse the expenditure incurred by the Consortium up to the date on which the Project ended and it shall recover any amount if its use is not substantiated by the demonstration report and related cost statement approved by the SJU.

By way of exception, in the event of improper termination by the Consortium or termination by the SJU on the grounds set out in points (c), (d), (e), or (h) hereabove, the SJU may require the partial or total repayment of sums already paid under the Agreement on the basis of the demonstration report and related cost statement approved by the SJU, in proportion to the gravity of the failings in question and after allowing the Consortium to submit its observations.

28 FORCE MAJEURE

- (a) Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Consortium shall immediately and at his own initiative record it and report it to the SJU. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Consortium to ensure full compliance with his obligations under this Agreement. In such event, the Consortium shall give priority to solving the problem rather than determining liability;
- (b) Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes or internal strike not exceeding seven days cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure. For the avoidance of doubt, (1) non-performance or delay in the performance justified by the safety assessment of the Project and (2) non delivery or delay in delivery of the certification of the on-board equipment Needed for the Project shall be both considered as a Force Majeure event;
- (c) Without prejudice to Article 28.a, if either contracting Party is faced with force majeure, it shall notify the other Party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects;
- (d) Neither contracting Party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Consortium is unable to perform its contractual obligations owing to force majeure, the Consortium shall have the right to remuneration only for tasks actually executed;
- (e) The contracting Parties shall endeavour to reduce damage to a minimum.

SIGNATURES

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

For the Consortium

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

signature: _____

signature: _____

Done in _____,
On _____ 2013

Done in Brussels,
On _____ 2013

SCHEDULES

SCHEDULE 1 – DEFINITIONS

[TO BE COMPLETED ONCE THE CONTENT OF THE AGREEMENT IS CONFIRMED]

“Access Right”	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.
“Accession Form”	means the form referred to in Schedule 4.
“Annexes”	refers to any document attached to the Schedules.
“Article(s)”	refers to the articles of the Agreement.
“Audit”	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 16 of this Agreement.
“Background”	means the Background Information and Background IPR which is held by a Consortium Member and/or the SJU prior to the Effective Date and/or is acquired by the Consortium Member, as a result of activities performed outside of the framework of this Agreement as identified in Schedule 5.
“Background Information”	means any Information which is owned or controlled by Consortium on the Effective Date of this Agreement and/or is acquired by the Consortium Member, as a result of activities performed outside of the framework of this Agreement.
“Background IPR”	means any IPRs which are owned or controlled by a Consortium Member on the date of signature of this Agreement and/or is acquired by the Consortium as a result of activities performed outside of the framework of this Agreement
“Background owned by SJU Member(s)”	means any Information and IPR that are held by the SJU and/or SJU Member(s)

	prior to the Effective Date and generated as a result of the activities conducted within the framework of the Programme as specified in the Multilateral Framework Agreement.”
“Certificate on the Final Cost Statement”	means the independent report of factual findings produced by an Independent Auditor as at the delivery by the Consortium of its last Deliverable under the Project.
“Co-financing”	means the process by which the SJU shall co-finance a maximum of 50% of the Consortium’s total actual costs incurred for the Project.
“Commission”	means the Commission of the European Union.
“Consortium”	refers to the Coordinator and the Consortium Members.
“Consortium Member(s)”	refers to means the legal entities participating in the Consortium as listed in the Agreement.
“Coordinator”	means the Consortium Member acting in the name and on behalf of all the Consortium Members.
“Dispute”	refers to any dispute arising between the Parties out of or in strict connection with this Agreement.
“Dissemination”	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.
“Effective Date”	means the date on which this Agreement enters into force, which shall occur upon the signature of this Agreement by the SJU.
“Eligible Cost(s)”	refers to the costs which are actually incurred by the Consortium and meet the criteria set in Schedule 8 attached to this Agreement.
“EUROCONTROL”	refers to the European Organisation for the Safety of Air Navigation.
“European Data Protection Supervisor”	refers to the authority as defined by Council Regulation (EC) No 45/2001.
“Final Cost statement”	means the form detailing all actual costs incurred by the Consortium for the Project
“Final Report”	refers to the deliverables B as defined in Section 3.2 of the Technical

Specifications attached hereto as Schedule 2 and in Schedule 3..

“Foreground”	means Foreground Information and Foreground IPR.
“Foreground Information”	means any Information that is generated as a result of the Project under this Agreement.
“Foreground IPR”	means any intellectual property rights that are generated as a result of the Project
“Foreground owned by SJU Member(s)”	means any Information and IPR that are generated as a result of the activities conducted within the framework of the Programme as specified in the Multilateral Framework Agreement and owned by the SJU Member(s) in accordance with the provisions herewith.
“Foreground owned by the SJU” or “SJU Foreground”	means any Foreground that shall be owned by the SJU in accordance with Article 18.1.2 (a) or any other Information and IPR that are generated as a result of the activities conducted within the frame of the Programme as specified in the Multilateral Framework Agreement and owned by the SJU in accordance the provisions herewith.
“Founding Member”	means the European Union and EUROCONTROL as per Article 1 of the SJU Statutes.
“GAAP”	refers to Generally Accepted Accounting Principles adopted by the Consortium.
“General Conditions”	refers to the second part of the Agreement.
“Good Industry Practice”	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.
“Independent Auditor”	means 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 Consortium. The auditor must be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the 8 th Council Directive on statutory audits of annual accounts and

consolidated accounts or any European Union legislation replacing this Directive.

Public bodies may opt to have a competent public officer provide his/her 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 Final Cost Statement, can be ensured.

“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.

“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 Consortium, 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 where their respective shares of the Project cannot be ascertained.

“Multilateral Framework Agreement”

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.
“Need” or “Needed”	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 18 of this Agreement.
“Pre-financing”	means any advance payment granted by the SJU to its Consortium in accordance with Article 15.1 of the Agreement.
“Project”	refers to the activities under <i>[insert project name]</i> Project proposed by the Consortium in response to call for proposal ref. SJU/LC/0070-CFP and selected by the SJU.
“Programme”	means the SESAR work programme defining the activities to be performed under the Development Phase, in accordance with the SJU Statutes.
“Report”	refers to the deliverables and quarterly reports defined in Section 3.2 of the Technical Specifications attached hereto as Schedule 2.
“Schedule”	refers to the documents attached to the Agreement listed in the Agreement's preamble which form an integral part of this Agreement.
“SESAR Joint Undertaking” or “SJU”	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.
“Special Conditions”	refers to the first part of this Agreement.
“Specific Third Party(ies)”	<u>refers to the third parties recognised as affiliated entities or as entities having a link to the following Consortium Member(s) in the framework of a legal structure covering a collaboration not limited to the Project, as defined in Article 9.2.2.</u>
“Specifications”	refers to a document approved by the SJU upon recommendation of the Programme Committee which provides the necessary details about a specific operational and technical requirement for repeated or continuous application, with which compliance is not compulsory.

“Standards and Norms Proposals”	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.
“Statutes” or “SJU Statutes”	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.
“Subcontractor(s)”	refers to means any third party contracted by the Consortium to carry out part of the Project activities.
“Technical Specifications”	refers to Schedule 2 of this Agreement.
“Third Party”	means any entity which is not a Party to this Agreement.
“Union”	refers to the European Union.
“Use” or “Used”	means the developing, creating and marketing of a product or process for the purpose of creating and providing a service
“Validation Report”	means a deliverable as described in the Technical Specifications, which contributes to the validation of operational threads ensuring overall consistency with the Programme.

SCHEDULE 2 – TECHNICAL SPECIFICATIONS

*Not attached hereto but known to both Parties
(attached to SJU call for proposal ref. SJU/LC/0087-CFP)*

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 Consortium Member], hereinafter referred to as "the Consortium Member", payment to the SJU of [amount of the pre-financing in euros], this amount representing the guarantee referred to in Article 13.3 [Agreement number and title] concluded between the Consortium Member 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 Consortium Member 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 Consortium Member 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)²

² The name(s) and position(s) of the persons signing on behalf of the guarantor must be shown in printed characters.

SCHEDULE 3 – CONSORTIUM SELECTED TENDER

Not attached hereto but known to both Parties

SCHEDULE 4 – ACCESSION OF CONSORTIUM MEMBERS TO THE AGREEMENT

(to be filled in by each Member of the Consortium)

[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 accede to the SJU Contract Number SJU/01...CTR relating to the performance of Project [name], between the SESAR Joint Undertaking and [name of the coordinator] established in (full address: city/state/province/country)]and accepts in accordance with the provisions of the aforementioned Contract all the rights and obligations established by this Contract.

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 – BACKGROUND DECLARATION FORM – TEMPLATE

[TO BE COMPLETED IN ACCORDANCE WITH THE TEMPLATES AVAILABLE AT THE FOLLOWING WEBSITE [HTTP://WWW.SESARJU.EU/ABOUT/PROCUREMENT](http://www.sesarju.eu/about/procurement)]

SCHEDULE 6 – DECLARATION OF FOREGROUND

[TO BE COMPLETED IN ACCORDANCE WITH THE TEMPLATES AVAILABLE AT THE FOLLOWING WEBSITE [HTTP://WWW.SESARJU.EU/ABOUT/PROCUREMENT](http://www.sesarju.eu/about/procurement)]

SCHEDULE 7 – CONSORTIUM NOT SET UP AS A LEGAL ENTITY

This Schedule shall not apply to Consortium 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 Project.

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.

The composition and organisation of a Consortium 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 Project 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 (“Notices - Correspondence”) 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 Consortium 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 MEMBERS CONTRIBUTIONS

The participation to be made by each Consortium Member to the selected Project shall be defined in its 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 Project.

SUBCONTRACTING BY THE CONSORTIUM MEMBERS

The Consortium Members may, at their own expense, subcontract with any sub-supplier or independent Consortium to perform any portion of the Project allocated to the Consortium subject to compliance with the Agreement and prior approval of the SJU.

LIABILITIES

The Coordinator is liable towards the SJU for the Consortium'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.

SCHEDULE 8 – ELIGIBILITY OF COSTS

CRITERIA FOR DETERMINING THE COSTS OF THE PROJECT

Cost categories

The Project Cost shall consist of the following costs:

Direct Costs

Direct Costs are all costs directly related to the Project and identified as such by the Consortium 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 Consortium and remunerated under the Consortium'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 initial Contribution, 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 Consortium's management principles and accounting practices.

- Special internal facilities and/or equipment costs.
Special facilities, associated services and/or equipment used on the Project 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 Project during the Co-Financing Agreement duration (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 Consortium);
 - (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 the Co-Financing Agreement for use in the context of the Project are eligible.

- Subcontracting costs.
The costs of subcontracting are Eligible Costs. The costs incurred by a Consortium Member as Subcontractor of another Consortium are not eligible.
- Depreciation of assets purchased or self-created and / or rental of assets if directly related to the Project.
- Tooling dedicated to the Project.
- Costs of consumables and supplies.
They are eligible only if purchased after the signing of the Co-Financing 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 Project, provided they comply with the Consortium's usual practices and are adequately recorded.

- Audit costs incurred in relation to the Certificate on Methodology and Certificate on Interim or Final Financial Statements.
- A Beneficiary may opt to declare average personnel costs. The cumulative criteria applicable for the acceptance of such average personnel costs shall be the ones set forth in the European Commission Decision of 24 January 2011 that shall apply mutatis mutandis to the Beneficiary(ies) under the Co-Financing Agreement.
- The criteria mentioned above shall apply without prejudice to the other eligibility criteria mentioned in this Schedule and shall exclude any ineligible items.

Indirect Costs

Indirect Costs are all those Eligible Costs, including General and Administrative Expenses, which cannot be identified by the Beneficiary(ies) as being directly attributed to the Project 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 Project.

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 incurred in relation to the guarantee provided for in Article 13.3 ("Bank guarantee").

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 Consortium with the help of the Consortium's existing cost accounting system.

The Consortium 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, a Consortium may opt instead for a flat rate of 7% of its total direct Eligible Costs, including its Eligible Costs for subcontracting.

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 Consortium Member during the duration of the Project;
- they must have been determined in accordance with the Consortium'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 Consortium Member's internal accounting and auditing procedures must permit direct reconciliation of the costs and receipts declared in respect of the Project with the corresponding financial statements and supporting documents;
- they must be recorded in the accounts of the Consortium 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 EU project, including depreciations or rentals of assets funded by any EU 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 eligible.

No recoverable VAT shall qualify as Eligible Costs co-financing.

Replacement costs (only in exceptional cases)

In very exceptional cases, when actual costs cannot be assessed and where justified by a strong supporting rationale and documentation, a contribution to the Project may be valued at its replacement cost, by assessing the market costs that would have to be incurred to replace it or to develop an alternative solution.

Costs Breakdown Form

In order to facilitate the assessment of the overall value of the Eligible Costs, the Consortium shall detail the value of its In-Kind Contribution per Project using the Cost Breakdown Form attached hereto as Annexe 1 of Schedule 8.

The data provided in these forms shall rely on the Consortium'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 Consortium, in relation to the expenses incurred in connection with the Programme, received from the European Union, EUROCONTROL, governments and/or any other organization shall be considered as receipts of the Project 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 Consortium Member shall not be deemed remunerations under this paragraph.

For the specific purpose of assessing the receipts and revenues by project, the key allocation used by the Consortium 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 any Consortium (including Consortium Participants). For this purpose, at the time of the submission of the Final Financial Statement (or Final Project Report), the final amount of the SJU Co-Financing will take into account any Project receipts received by the Consortium.

SCHEDULE 8 – ANNEXE 1