

AGREEMENT

regarding approval of guarantees for a Legal entity established in the Union and controlled by an associated third country or a by an associated third-country entity to be eligible Legal entity in accordance with REGULATION (EU) 2021/697 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092

The following agreement (the "Agreement") has been entered into between

The Swedish Defence Materiel Administration (*swe*: Försvarets materielverk), hereinafter referred to as the "FMV", authorised by the government of the Kingdom of Sweden.
VAT registration. no. SE202100461501
SE-106 86 Stockholm

and

[Företagets fullständiga firma], hereinafter referred to as the "Legal entity"
VAT registration. no. [#####-#####]
[adress]

Together herinafter referred to as the "Parties"

1. BACKGROUND

1.1. REGULATION (EU) 2021/697 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (the "Regulation") states; "In order to contribute to the enhancement of the competitiveness and innovation capacity of the Union's defence industry, a European Defence Fund (the "Fund") should be established for a period of seven years to align its duration with that of the multiannual financial framework 2021-2027 (MFF 2021-2027) laid down in Council Regulation (EU, Euratom) 2020/2093 (5) on the basis of an integrated approach. The aim of the Fund is to enhance the competitiveness, innovation, efficiency and technological autonomy of the Union's defence industry, thereby contributing to the Union's strategic autonomy by supporting the cross-border cooperation between Member States as well as cooperation between enterprises, research centres, national administrations, international organisations and universities throughout the Union, both in the research and in the development phases of defence products and technologies. To achieve more innovative solutions and to foster an open internal market, the Fund should support and facilitate the widening of cross-border cooperation of small- and medium-sized enterprises (SMEs) and middle capitalisation companies (mid-caps) in the defence sector. Within the Union, common defence capability shortfalls are identified within the framework of the Common Security and Defence Policy, in particular through the Capability Development Plan (CDP), while the Overarching Strategic Research Agenda (OSRA) also identifies common defence research objectives. (Recital 5 of the Regulation)".

Signature: _____

- 1.2. According to article 3 of the Regulation the general objective of the Fund is to foster the competitiveness, efficiency and innovation capacity of the European defence technological and industrial base (EDTIB) throughout the Union, which contributes to the Union strategic autonomy and its freedom of action, by supporting collaborative actions and cross-border cooperation between legal entities throughout the Union, in particular SMEs and mid-caps, as well as by strengthening and improving the agility of both defence supply and value chains, widening cross-border cooperation between legal entities and fostering the better exploitation of the industrial potential of innovation, research and technological development, at each stage of the industrial life cycle of defence products and technologies.
- 1.3. The Fund shall be open to the participation of members of the European Free Trade Association which are members of the EEA, in accordance with the conditions laid down in the Agreement on the European Economic Area (associated countries) (article 5 of the Regulation).
- 1.4. The Fund shall provide support for actions covering new defence products and technologies and the upgrade of existing defence products and technologies provided that the use of pre-existing information needed to carry out the action for the upgrade is not subject to a restriction by a non-associated third country or a non-associated third-country entity directly, or indirectly through one or more intermediary legal entities, in such a way that the action cannot be carried out.
- 1.5. The action shall be carried out by legal entities cooperating within a consortium of at least three eligible legal entities which are established in at least three different Member States or associated countries. At least three of those eligible legal entities established in at least two different Member States or associated countries shall not, during the entire period in which the action is carried out, be controlled, directly or indirectly, by the same legal entity and shall not control each other.
- 1.6. The recipients and subcontractors involved in the action shall be Legal entities established in the Union or in an associated country (article 9.1 of the Regulation). According to article 9.3 of the Regulation, for the purposes of the actions funded under the Programme, the recipients and subcontractors involved in the action shall not be subject to control by a non-associated third country or by a non-associated third-country entity. According to article 9.4 of the Regulation, a Legal entity established in the Union and controlled by a non-associated third country or a non-associated third-country entity, shall be eligible as a recipient or subcontractor involved in the action only if guarantees approved by the Member State or the associated country in which it is established in accordance with its national procedures are made available to the Commission.
- 1.7. [Description of the action]

Signature: _____

- 1.8. The Parties enter into this Agreement to enable for the FMV, to approve separately established guarantees from the Legal entity, in relation to the Commission in accordance with article 9.4 of the Regulation, so that the Legal entity, which is controlled by a non-associated third country or a non-associated third-country entity, may be eligible as a recipient or subcontractor involved in the action. Approval of such guarantees by the FMV is only valid if the Legal entity fulfils its obligations in accordance with this Agreement.

2. THE AGREEMENT

- 2.1. The Agreement comprises this agreement, relevant annexes, where applicable, and documents specified below. If the documents contain ambiguities or statements that contradict one another, the documents shall apply in the following order, unless circumstances obviously dictate otherwise:
- (i) Amendments and addenda to the Agreement
 - (ii) This agreement, with annex 1, [“Guarantee template”]
 - (iii) REGULATION (EU) 2021/697 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092

3. TERMS OF THE AGREEMENT

- 3.1. The Agreement shall apply from the date on which the Agreement has been signed by both Parties.

4. GENERAL COMMITMENTS OF THE PARTIES

- 4.1. The Legal entity assures that it will not contravene the security and defence interests of the Union and its Member states as established in the framework of the Common foreign and Security Policy (the “CFSP”) pursuant to Title V of the Treaty on European Union (the “TEU”), or objectives set out in Article 3 of the Regulation.
- 4.2. The Legal entity assures that the control by the non-associated third country or the non-associated third-country entity over the Legal entity is not exercised in a manner that restrains or restricts its ability to carry out the action and to deliver results, that imposes restrictions concerning its infrastructure, facilities, assets, resources, intellectual property or know-how needed for the purpose of the action, or that undermines its capabilities and standards necessary to carry out the action.
- 4.3. The Legal entity shall have all necessary permits in accordance with the Swedish Military Equipment Act (SFS 1992:1300) (Swedish: Lag (1992:1300) om krigsmateriel) and the Swedish Military Equipment Ordinance (SFS 1992:1303) (Swedish: Förordning (1992:1303) om krigsmateriel) as well as other adherent legislation and ordinances.

Signature: _____

4.4. Provided that the Legal entity fulfils its obligations in accordance with this Agreement, The FMV shall approve separately established guarantees (See annex 1, “Guarantee template”) given and made available to the Commission by the Legal entity in accordance with article 9 of the Regulation. Such approval is only valid as long as the Legal entity fulfils its obligations in accordance with this Agreement.

5. SECURITY REQUIREMENTS

5.1. “Classified information” means information or material, in any form, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the Union, or of one or more of the Member States, and which bears an EU classification marking or a corresponding classification marking, as established in the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union (article 2 (21) of the Regulation).

5.2. “Sensitive information relating to the action”: For the purpose of this Agreement, sensitive information is limited to background information, including data, know-how and information, from other companies generated before or outside the operation of the Fund and results generated in connection to actions supported by the Fund. For the avoidance of doubt, sensitive information does not include Classified information.

5.3. The Legal entity is aware of and accepts that access to Classified Information is authorised in accordance with the relevant security rules applicable to European Union Classified Information (EUCI) and to Classified Information according to the Swedish Protective Security Act (SFS 2018:585) (Swedish: Säkerhetsskyddslagen (2018:585) as well as adherent Swedish national legislation and regulations.

5.4. The Legal entity accepts and assures that, for the purpose of the action, measures are in place to ensure:

- i) that the access by a non-associated third country or a non-associated third country entity to Classified Information relating to the action is prevented, and
- ii) that the employees or other persons involved in the action have national Personnel Security Clearances (PSCs), where appropriate.
- iii) that premises and storage of Classified Information, , have the required protection and have a national Facility Security Clearance (FSC), where appropriate.

Signature: _____

- 5.5. The Legal entity is aware and accepts that deliveries or work in accordance with this Agreement and agreements regarding the implementation of the action as well as the participation in the action and the execution of the action may be covered by regulations for protective security in accordance with Protective Security Agreements (Swedish: Säkerhetsskyddsavtal) and other relevant security agreements. As a result, the Legal entity, the Legal entity's personnel and/or subcontractors are obliged to comply with the requisite security vetting and/or criminal records check. Hence the approval by FMV of separately established guarantees in accordance with article 9.4 of the Regulation is conditional on approval of such checks for the Legal entity, the Legal entity's personnel and subcontractors and the signing of a dedicated Protective Security Agreement with the FMV. The participation in the action and execution of the action may be conditional on approval of such checks for the Legal entity, the Legal entity's personnel and subcontractors and the signing of a dedicated Protective Security Agreement with the FMV.
- 5.6. The FMV shall, subject to Swedish law, not disclose any classified information, which it may receive from the Legal entity under this Agreement.

6. DISCLOSURE AND USE

- 6.1. The Legal entity shall not disclose Classified Information, which it may receive as a result of conclusion of the action or during the implementation of the action, to a non-associated third party, a non-associated third country or a non-associated third-country entity without explicit permission in writing by the FMV. The Legal entity may only use such information during the implementation of the action and for the purpose of the action.
- 6.2. The Legal entity is not entitled to publish or otherwise make public reports or other documentation or information prepared, received or accessed by the Legal entity as a result of the action or during the implementation of the action without explicit permission in writing by the FMV.
- 6.3. The Legal entity shall not disclose Sensitive information relating to the action to any non-associated third party, a non-associated third country or a non-associated third-country entity without prior explicit permission in writing by the FMV.
- 6.4. The Legal entity shall, subject to clause 5.4 ii) above, ensure that Classified information, is not disclosed by the Legal entity's employees or other persons involved in the action and is only passed on to employees or other persons involved in the action, if it is necessary in order to perform the work and for the purpose of the action. The Legal entity shall enter into necessary classified information agreements, Non-Disclosure Agreement (NDA), and/or equivalent with its employees or other persons involved in the action.
- 6.5. After the completion of the execution of the action, the Legal entity shall destroy or return documents and other media etc containing Classified Information, in accordance with further instructions from FMV.

Signature: _____

7. HANDLING OF PERSONAL DATA

- 7.1. The Legal entity bears the responsibility of ensuring that all handling of personal data by the Legal entity is carried out in accordance with relevant legislation.
- 7.2. In order for the FMV to be able to fulfill its obligations under the Agreement, the FMV, to the extent stated in the Agreement, needs to process certain personal information about the personnel of the Legal entity, such as name, address, e-mail address and telephone number. The Legal entity undertakes to, in accordance with the provisions of Article 14 in the EU General Data Protection Regulation, (EU) 2016/679, inform personnel involved in the commissioned work that the FMV is carrying out this processing of personal data.
- 7.3. If the Legal entity shall process personal data on behalf of the FMV, the Legal entity shall, in order to be allowed to do so, enter into a special written personal data processing agreement with the FMV in accordance with the template attached to the contract.

8. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 8.1. The Legal entity assures and accepts the compliance with the provisions of article 20 and 23 of the Regulation.
- 8.2. The Legal entity assures that ownership of the intellectual property arising from, and the results of, the action shall remain within the recipient during and after completion of the action, are not subject to control or restriction by a non-associated third country or by a non-associated third country entity, and are neither exported outside the Union or outside associated countries nor accessible from outside the Union or outside associated countries without the approval of the FMV or the associated country in which the Legal entity is established and in accordance with the objectives set out in article 3 of the Regulation.

9. REPORTING AND AUDITING

- 9.1. The FMV owns the right to follow-up the Legal entity's fulfilment of the commitments in accordance with this Agreement. The follow-up may be executed by self-reporting and/or auditing.
- 9.2. Upon request by the FMV, the Legal entity shall report in writing how the conditions in this Agreement are complied with, at the latest within thirty (30) days from the day the request was received. The Legal entity shall submit the information required and in accordance with the request.
- 9.3. The Legal entity shall enable the FMV to perform audits in accordance with this Section 9, to ensure that the Legal entity fulfils its commitments in accordance with this Agreement. The Legal entity shall in connection to the audit, provide the information and the documentation deemed necessary by the auditor to verify compliance with the conditions in this Agreement.

Signature: _____

- 9.4. The FMV shall in relation to the Legal entity be entitled to full transparency regarding the fulfilment of all of the Legal entity's commitments according to this Agreement. The examinations can be carried out by the FMV and/or by an appointed advisor of the FMV such as an authorised public accountant and/or an expert within the professional field in question.
- 9.5. In exercising the right to transparency, the FMV shall be granted access to such data that is relevant to the audit and follow-up of the requirements in accordance with this Agreement and requested by the FMV, and which is deemed necessary by the auditor in order to carry out the audit.
- 9.6. The auditor appointed by the FMV shall also be granted access to all information, to the extent deemed necessary and relevant by the auditor in order to carry out the audit in accordance with this Agreement.

10. DAMAGES AND LIABILITY

- 10.1. The FMV have the right to withdraw the approval according to clause 4.4. in this Agreement if the Legal entity does not fulfil its obligations in accordance with this Agreement.
- 10.2. The Legal entity shall hold FMV harmless for damages incurred if the Legal Entity by act or omission does not fulfil its obligations in accordance with this Agreement or mandatory obligations according to the Regulation.

11. SUBCONTRACTORS

- 11.1. The Legal entity is always liable to the FMV under this Agreement, for subcontractors as for its own commitments.

12. NOTIFICATION

- 12.1. All notices between the Parties in accordance with this Agreement shall be in writing and sent to the following addresses to be valid;

For the FMV:
Att: [Point of Contact]
Address
Försvarets materielverk
SE-XXX XX Stad
SWEDEN
Telephone number: +46 XXXXXXXXX
E-mail address: XXXXX.XXXXX@fmv.se

For the Legal entity:
[Name]
Att: [Point of Contact]
Address
Telephone number:
E-mail address:

Signature: _____

13. APPLICABLE LAW AND DISPUTES

- 13.1. This Agreement is, in its entirety, subject to Swedish law, without regard to conflict of laws principles.
- 13.2. Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”, *Swedish: Stockholms Handelskammars Skiljedomsinstitut*).
- 13.3. The seat of arbitration shall be Stockholm.
- 13.4. The language to be used in the arbitral proceedings shall be Swedish.
- 13.5. Arbitration conducted with reference to this arbitration clause shall be kept confidential. This confidentiality undertaking includes all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared in connection with the proceedings. Information covered by confidentiality may not in any form be disclosed to a third party without the written consent of FMV. However, a party shall not be prevented from disclosing such information through an application for interim measures before a general court, an action for challenge and invalidity of an arbitration award, measures for the enforcement of an arbitration award or otherwise in order to best exercise its right in the event of a dispute, or if such an obligation follows from law, regulation, government decision, stock exchange contract or equivalent.
- 13.6. The Legal entity may not stop or postpone the execution of the performance of its obligations pursuant to this Agreement on the grounds that arbitration proceedings have been applied for or are in progress.

This Agreement has been executed in two (2) copies, of which each party has taken one.

Stockholm [date]

[Place and date]

The Swedish Defence Materiel Administration

[Legal entity]

Name:
Title:

Name:
Title:

Signature: _____