

**AGREEMENT**  
**regarding approval of guarantees for an undertaking established in the Union**  
**and controlled by a third country or a by a third-country entity to be eligible**  
**entity in accordance with REGULATION (EU) 2018/1092 OF THE EUROPEAN**  
**PARLIAMENT AND OF THE COUNCIL**  
**of the 18 July 2018**

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

Försvarets materielverk (the Swedish Defence Materiel Administration), 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 "Undertaking"

VAT registration. no. [#####-#####]

[adress]

Together herinafter referred to as the "Parties"

**1. BACKGROUND**

- 1.1. REGULATION (EU) 2018/1092 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (the "Regulation") states; "In order to foster the competitiveness, efficiency and innovation capacity of the Union's defence industry, which contributes to the Union's strategic autonomy, a European Defence Industrial Development Programme (the 'Programme') should be established." (Recital 2 of the Regulation).
- 1.2. According to article 6.1 of the Regulation the Programme shall provide support for actions by beneficiaries in the development phase covering both new defence products and technologies and the upgrade of existing 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 third country or by a third-country entity, directly, or indirectly through one or more intermediary undertakings.
- 1.3. Given that the aim of the Programme is, in particular, to enhance cooperation between undertakings across Member States, an action should be eligible for funding under the Programme only if it is to be carried out by a consortium of at least three undertakings based in at least three different Member States.

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- 1.4. The beneficiaries and subcontractors involved in the action shall be public or private undertakings established in the Union (article 7.1 of the Regulation). According to article 7.3 of the Regulation, for the purposes of the actions funded under the Programme, the beneficiaries and subcontractors involved in the action shall not be subject to control by a third country or by a third-country entity. According to article 7.4 of the Regulation, an undertaking established in the Union and controlled by a third country or by a third-country entity, shall be eligible as a beneficiary or subcontractor involved in the action only if guarantees approved by the Member State in which it is established in accordance with its national procedures are made available to the Commission.
- 1.5. [Description of the action]
- 1.6. The Parties enter into this Agreement to enable for the FMV, to approve separately established guarantees from the Undertaking, in relation to the Commission in accordance with article 7.4 of the Regulation, so that the Undertaking, which is controlled by a third country or by a unit in a third country, may be eligible, subject to article 15.2 of the Regulation, as a beneficiary or subcontractor involved in the action. Approval of such guarantees by the FMV is only valid if the Undertaking fulfils its obligations in accordance with this Agreement.

## 2. THE AGREEMENT

- 2.1. The Agreement comprises, 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) 2018/1092 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (the “Regulation”).

## 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 Undertaking 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 pursuant to Title V of the Treaty on European Union (the “TEU”), or objectives set out in Article 3 of the Regulation.

Signature: \_\_\_\_\_

- 4.2. The Undertaking assures that the control by the third country or by the third-country entity over the Undertaking 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 Undertaking shall have all necessary permits in accordance with the Swedish Military Equipment Act (SFS1992:1300) (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.
- 4.4. Provided that the Undertaking 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 Undertaking in accordance with article 7 of the Regulation. Such approval is only valid as long as the Undertaking fulfils its obligations in accordance with this Agreement.

## 5. PROTECTIVE SECURITY AND CONFIDENTIALITY REQUIREMENTS

- 5.1. Classified Information means any information or material, regardless of its form, that is assigned a Classification level which under the national legislation of either Participant requires protection against loss, unauthorised disclosure or other Compromise, and has been designated as such, and is exchanged between, or generated by, the Participants.
- 5.2. The Undertaking 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.
- 5.3. The Undertaking accepts and assures that, for the purpose of the action, measures are in place to ensure:
- i) that the access by a third country or by a third-country entity to Classified Information or other sensitive 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 security Classified Information, as well as other sensitive information, have the required security protection and have a national Facility Security Clearance (FSC), where appropriate.

Signature: \_\_\_\_\_

5.4. The Undertaking 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 Undertaking, the Undertaking'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 7.4 of the Regulation is conditional on approval of such checks for the Undertaking, the Undertaking'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 Undertaking, the Undertaking's personnel and subcontractors and the signing of a dedicated Protective Security Agreement with the FMV.

5.5. The FMV shall, subject to Swedish law, not disclose any sensitive information or other information subject to secrecy/confidentiality, which it may receive from the Undertaking under this Agreement.

## 6. DISCLOSURE AND USE

6.1. The Undertaking shall not disclose Classified Information, sensitive information or other information subject to secrecy/confidentiality, which it may receive as a result of conclusion of the action or during the implementation of the action, to a third party, a third country or a third-country entity without explicit permission in writing by the FMV. The Undertaking may only use such information during the implementation of the action and for the purpose of the action.

6.2. The Undertaking is not entitled to publish or otherwise make public reports or other documentation or information prepared, received or accessed by the Undertaking as a result of the action or during the implementation of the action without explicit permission in writing by the FMV.

6.3. The Undertaking shall not disclose information subject to ownership and intellectual property rights to any third party, a third country or a third-country entity without prior explicit permission in writing by the FMV.

6.4. The Undertaking shall, subject to clause 5.3 ii) above, ensure that Classified information, sensitive information or other information subject to secrecy/confidentiality is not disclosed by the Undertaking'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 Undertaking shall [enter into necessary confidentiality agreement, Non-Disclosure Agreement \(NDA\), and/or equivalent with its employees or other persons involved in the action.](#)

Signature: \_\_\_\_\_

6.5. After the completion of the execution of the action, the Undertaking shall destroy or return documents and other media etc containing Classified Information, sensitive information or other information subject to secrecy/confidentiality in accordance with further instructions from FMV.

## 7. HANDLING OF PERSONAL DATA

7.1. The Undertaking bears the responsibility of ensuring that all handling of personal data by the Undertaking 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 Undertaking, such as name, address, e-mail address and telephone number. The Undertaking 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 Undertaking shall process personal data on behalf of the FMV, the Undertaking 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 Undertaking assures and accepts the compliance with the provisions of article 12 of the Regulation.

8.2. The Undertaking assures that ownership of the intellectual property arising from, and the results of, the action shall remain within the beneficiary during and after completion of the action, are not subject to control or restriction by a third country or by a third-country entity, and are not exported outside the Union nor is access to them from outside the Union granted without the approval of the FMV 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 Undertakings fulfilment of the commitments in accordance with this Agreement. The follow-up may be executed by self-reporting and/or auditing.

Signature: \_\_\_\_\_

- 9.2. Upon request by the FMV, the Undertaking 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 Undertaking shall submit the information required and in accordance with the request.
- 9.3. The Undertaking shall enable the FMV to perform audits in accordance with this Section 7, to ensure that the Undertaking fulfils its commitments in accordance with this Agreement. The Undertaking 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.
- 9.4. The FMV shall in relation to the Undertaking be entitled to full transparency regarding the fulfilment of all of the Undertakings 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 4.3 in this Agreement if the Undertaking does not fulfil its obligations in accordance with this Agreement.
- 10.2. If the Undertaking, at the discretion of the FMV, does not fulfil its obligations in accordance with this Agreement or mandatory obligations according to the Regulation, the funding provided under the Programme shall be reimbursed.
- 10.3. If the Undertaking, at the discretion of the FMV, does not fulfil its obligations in accordance with this Agreement, the Undertaking shall compensate the FMV for any damage or loss incurred.

## 11. SUBCONTRACTORS

- 11.1. The Undertaking 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;

Signature: \_\_\_\_\_

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 Undertaking:  
[Name]  
Att: [Point of Contact]  
Address  
Telephone number:  
E-mail address:

### 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. The Undertaking 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]

Försvarets materielverk

[Undertaking]

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

Signature: \_\_\_\_\_